TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 109.

THE ATLANTIC TRUST COMPANY, PETITIONER,

vs.

EDGAR C. CHAPMAN, RECEIVER OF THE WOODBRIDGE CANAL AND IRRIGATION COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1907.
CERTIORARI AND RETURN FILED NOVEMBER 25, 1907.

(20,378.)

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a No. 1142.

United States Circuit Court of Appeals for the Ninth Circuit.

ATLANTIC TRUST COMPANY (a Corporation), Appellant,

vs.

E. C. CHAPMAN, Receiver of the Woodbridge Canal and Irrigation Company (a Corporation), P. A. BUELL & Co., EATON, NEWELL & BUCKLEY, LOUIS EPSTEIN & Co., FRESNO NATIONAL BANK, STOCKTON LUMBER Co., KUTNER, GOLDSTEIN & Co., BANK OF CENTRAL CALIFORNIA, J. J. SWAIN, H. BENTLY, FRANCIS COGSWELL and STANLEY W. DEXTER, Appellees.

Transcript of Record.

Upon Appeal from the United States Circuit Court for the Northern District of California.

1 In the United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

THE ATLANTIC TRUST COMPANY (a Corporation), as Trustee of the Trusts Created by the Mortgage in this Complaint Described, Plaintiff,

vs.

THE WOODBRIDGE CANAL AND IRRIGATION COMPANY (a Corporation), Defendant.

Bill of Complaint.

To the Justices of the Circuit Court of the United States, for the Northern District of California:

The Atlantic Trust Company, of the city of New York, and a citizen of the State of New York, brings this its bill against the Woodbridge Canal and Irrigation Company, of San Francisco, and a citizen of the State of California, and thereupon your orator complains and says:

I.

That at all the times in this complaint mentioned the plaintiff, the Atlantic Trust Company, was and now is a corporation, organized and existing under and by virtue of the laws of the State of New York, having its principal place of business in the city and county of New York, in said State, and being formed and in-

2 corporated for the purpose and with the express powers of accepting, holding and managing trusts and trust properties.

That at all of said times the Woodbridge Canal and Irrigation Company was and now is a corporation, duly organized and exist-

ing under and by virtue of the laws of the State of California, having its principal place of business in the city and county of San Francisco, in said State, and was formed for the purpose and with the powers of owning and operating an irrigating canal in the county of San Joaquin, in said State of California.

That said defendant is a citizen and resident of the Northern Judicial District of the State of California, and that this plaintiff is a citizen and resident of the Southern Judicial District of the State of New York.

II.

That heretofore, to wit, on or about the 17th day of July, 1891, at said city and county of San Francisco, the said Woodbridge Canal and Irrigation Company made and executed one hundred (100) bonds, numbered from one (1) to one hundred (100), both numbers inclusive, each of which said bonds was in the words and figures following, to wit:

3 "UNITED STATES OF AMERICA,

No. ——, *State of California,* $1000.

First Mortgage Convertible Gold Bond of the Woodbridge Canal and Irrigation Company.

The Woodbridge Canal and Irrigation Company, a corporation duly organized under the laws of the State of California, acknowledges itself indebted to the bearer, or to the registered owner thereof, in the sum of one thousand dollars, which it promises to pay in the gold coin of the United States of America, of the present weight and fineness, on the first day of September, in the year nineteen hundred and one, at the office of the Atlantic Trust Company, in the City of New York, with interest thereon, at the rate of six per centum per annum, payable semi-annually, at the same place, upon presentation and surrender of the coupons hereto annexed, on the first day of March and September in each year, as they respectively become payable, so long as the principal remains unpaid.

This bond is one of a series of one hundred bonds, of similar amount, tenor and date, which are secured by a mortgage or deed of trust, bearing date this day, executed and delivered by the Woodbridge Canal and Irrigation Company to the Atlantic Trust
4 Company, as Trustee, conveying and assigning to the said Trustee all its corporate property and franchises now owned or hereafter acquired.

Any lawful holder of this bond, upon presenting the same at the office of the said Trustee, with all unmatured coupons attached thereto, may have the same registered in his own name, or that of any other person, in a book to be kept for that purpose, and such name, with the date of registry, shall be endorsed upon the bond by the said Trustee. From the date of such registry until, by a like

endorsement, it be again payable to bearer, such bond shall be transferable only by a written transfer thereof on the books of the Trustee, such transfer, and the date thereof, to be in like manner endorsed upon the bond, and while so registered, all payments becoming due thereon, either for principal or interest, shall be paid only to such registered owner or to his order. Successive registration and transfers to bearer may be made at the option of any lawful holder and owner of this bond.

It is expressly agreed that in case default shall be made in the payment of any semi-annual installment of interest on the day whereon the same shall fall due, as herein provided, or in the performance of certain covenants contained in said mortgage or deed of trust, and should default in any of such cases continue for the space of six months, then, and in either of such cases, the principal sum herein mentioned may, as in said mortgage or deed of trust provided, immediately become due and payable, anything herein contained to the contrary notwithstanding.

At any time between the first day of July, 1894, and the
5 first day of January, 1895, this bond, upon presentation and surrender thereof, to the said trustee, with all unmatured coupons attached, may, at the holder's option, be converted into the capital stock of this company at par, and the holder in such case shall be entitled to receive in payment of this bond one thousand shares of said capital stock of one dollar each, said stock being reserved in the treasury of the Company for that purpose.

This bond is also entitled to the benefits of the sinking fund in said mortgage or deed of trust provided for. The holder of this bond, by acceptance thereof, hereby waives any personal claim or demand against the stockholders of said Company, for the indebtedness incurred hereby.

This bond shall not become valid or obligatory until the certificate endorsed hereon shall have been duly signed by or in behalf of the said Atlantic Trust Company as Trustee.

In witness whereof, the Woodbridge Canal and Irrigation Company has caused these presents to be sealed with its corporate seal, and to be signed by its President, and attested by its Secretary, and the annexed coupons to be executed with the engraved signature of its Secretary, this 17th day of July, one thousand eight hundred and ninety-one.

[CORPORATE SEAL.] M. V. B. WATSON, *President.*

Attest: M. T. MOSES, *Secretary.*"

That each of said one hundred bonds was in the words
6 and figures above set forth, except that each was severally numbered as aforesaid, and that to each of said bonds were attached twenty (20) interest coupons, likewise executed by the Woodbridge Canal and Irrigation Company, each of which coupons was in the words and figures following, to wit:

"$30.

"On the first day of ——, 18—, the Woodbridge Canal and Irrigation Company will pay, at the office of the Atlantic Trust Company, in the City of New York, upon presentation and surrender of this coupon, to the bearer, or to the registered owner thereof, Thirty Dollars in United States gold coin for six months' interest then due on Bond No. ——.

M. T. MOSES, *Secretary.*"

That the blanks in said twenty (20) coupons attached to each bond were so filled out as to bear the number of the bond to which they were attached and to fix the date of payment of each coupon so that they should consecutively fall due, one on the first day of September and one on the first day of March of each year, beginning March 1st, 1892, and ending September 1st, 1901.

That each of said bonds when so executed, as aforesaid, bore endorsed thereon the following certificate, signed by the plaintiff:

"The Atlantic Trust Company hereby certifies that the within bond is one of the bonds issued under and in pursuance of
7 a certain mortgage or deed of trust, dated July 17th, 1891, and duly executed and delivered to said Company, as Trustee, by the Woodbridge Canal and Irrigation Company.

THE ATLANTIC TRUST COMPANY,
By W. H. MALE, *President.*"

That sixty-six (66) of said one hundred (100) bonds, with said relative coupons attached thereto, when so executed were, by the Woodbridge Canal and Irrigation Company, in exchange for money paid to it, sold and delivered to purchasers thereof prior to September, 1891.

That thirty-three (33) others of said bonds, prior to September, 1894, were by said Woodbridge Canal and Irrigation Company pledged to sundry creditors to secure debts due to them from said Woodbridge Canal and Irrigation Company.

That one (1) of said bonds has never been issued to any person but is still in the possession of the maker.

III.

That on or about the 17th day of July, 1891, and in order to secure the payment of the said sixty-six (66) bonds so sold and delivered and the thirty-three (33) bonds so pledged as aforesaid, the said Woodbridge Canal and Irrigation Company executed and delivered to this plaintiff, as trustee of the trusts thereby created, its certain indenture of mortgage, dated July 17, 1891, and executed in its corporate name by M. V. B. Watson, as its President, and by M. T. Moses, as its secretary, and to which mortgage was affixed its corporate seal.

8 That said mortgage was further, on or about the day on which it bears date, signed and executed by this plaintiff in acceptance of the trusts thereby created and imposed upon this plaintiff.

That said mortgage was duly acknowledged, so as to entitle it to be recorded, and it was recorded on the 10th day of August, 1891, in book "A" of Deeds, volume 74, page 361, in the county recorder's office of the county of San Joaquin, State of California.

That a copy of said mortgage is hereto attached, marked Exhibit "A," and is here referred to and made part of this complaint.

That in and by said mortgage the said Woodbridge Canal and Irrigation Company did mortgage to this plaintiff, as trustee, to secure the payment of the aforesaid bonds, the entire corporation property of said Woodbridge Canal and Irrigation Company, and all its lands, tenements, hereditaments, privileges, franchises, rights of way, flowage and riparian rights, easements and fixtures, then owned or thereafter to be acquired by it, and all its canals, flumes, headworks, gates, dams, and bridges, then constructed or to be thereafter constructed, extending from the point of diversion in the Mokelumne river, in the town of Woodbridge, in San Joaquin County aforesaid, in a westerly direction to Taison and New Hope, in said county, and in an easterly and southerly direction to the Calaveras river, with all other or branch canals that might be thereafter constructed within said territory south and west of the Mokelumne river; and all the estate, right, title and interest, claims and
9 demands, rights of way and other easements, whether at law or in equity, of the said canal company of, in and to the same; and also all buildings, fixtures, and personal property thereon or belonging to said canal company; and all receipts, incomes and profits which said company shall derive on account of any contract or agreement for the transfer of water rights as appurtenant to specified lands, excepting the annual rentals for the use of said water and interest on such contracts or agreements.

IV.

That on said 17th day of July, 1891, and at the time of the execution of the said bonds and the said mortgage, M. V. B. Watson was the president and M. T. Moses was the secretary of the said Woodbridge Canal and Irrigation Company, and as such president and secretary they were duly and fully authorized and empowered to execute the said bonds and mortgage, in the name and as the act of the said Woodbridge Canal and Irrigation Company, and to attach to said bonds and mortgage its corporate name, and to affix thereto its corporate seal, by resolution adopted by the vote of the holders of more than two-thirds of its capital stock at a meeting of its stockholders, duly and regularly called, notified, organized and held at the office of the Woodbridge Canal and Irrigation Company in the city and county of San Francisco, State of California, on the 11th day of July, 1891; and said president and secretary were further authorized to so execute said bonds and mortgage by resolution of the board of directors of the said Woodbridge Canal and Irrigation Company, duly passed and adopted.

10 V.

That since the execution of said mortgage the Woodbridge Canal and Irrigation Company has constructed and now owns an irrigating

canal in the county of San Joaquin, State of California, beginning at a dam in the Mokelumne river, in the town of Woodbridge, in the southeast quarter (¼) of section thirty-four (34), in township four (4), north of range six (6) east, Mount Diablo Base and Meridian, and running thence through said section thirty-four (34) and through and across portions of sections three (3), ten (10), eleven (11), fourteen (14), twenty-three (23), twenty-six (26), thirty-five (35), and thirty-six (36), in township three (3), north of range six (6) east, and through and across portions of sections one (1), twelve (12) and thirteen (13), in township two (2) north of range six (6) east; and also through and across section eighteen (18), in township (2) north of range seven (7) east, and following the line of division between subdivisions fifty-one (51) and sixty-one (61), of El Rancho Del Campo de Los Franceses; to the Calaveras river.

That the said Woodbridge Canal and Irrigation Company has likewise constructed and now owns and is operating sundry branch or lateral canals, diverging from said main canal above referred to, in a general westerly direction and irrigating the lands along their course.

That the Woodbridge Canal and Irrigation Company since the execution of said mortgage, has likewise acquired and now owns various other lands and properties, contracts and mortgages, in said county of San Joaquin and in the Northern District of the
11 State of California, a list of which properties is hereto appended, marked Exhibit "B," and is here referred to and made part of this complaint.

VI.

That no part of the principal sum mentioned in any of said bonds has ever been paid, and no part of the interest upon said bonds, which, by the terms thereof and of the coupons attached thereto, became due and payable on the first day of September, 1894, has ever been paid, nor has any money for the purpose of paying said September interest ever been paid or tendered to this plaintiff.

That on or about the first day of September, 1894, the holders of fifty-five (55) of said bonds, which had been so sold as aforesaid by the Woodbridge Canal and Irrigation Company, did present, at the office of this plaintiff, in the city of New York, the fifty-five (55) several coupons attached to said bonds and then on said day, falling due as aforesaid according to their terms, and did demand from this plaintiff payment thereof; that none of said coupons, nor any part of the money due thereon, was then paid by this plaintiff, or by any one; nor has any part of said money due on said coupons ever been paid by this plaintiff, or by any one; and plaintiff avers that thereby, on said first day of September, 1894, default was made by the said Woodbridge Canal and Irrigation Company in the payment of the said installment of interest upon said bonds.

That at a special meeting of the board of directors of the
12 Woodbridge Canal and Irrigation Company, held at its office in the city and county of San Francisco on the first day of

October, 1894, a resolution was unanimously adopted, declaring that said Woodbridge Canal and Irrigation Company was then unable, and would continue to be unable to pay at any time within the ensuing six months, that is to say, prior to April 1st, 1895, any of its indebtedness or any of the interest upon the said bonds; and further providing that it waived all conditions and provisions specified or provided in article fifth of the said mortgage, Exhibit "A" hereof, as conditions precedent to the enforcement of the lien created by said mortgage; and in and by the said resolution this plaintiff was authorized and requested to immediately commence this action for the foreclosure of the said mortgage, and to enforce the payment of the principal and interest of the said bonds.

That on the 2d day of October, 1894, and prior to the commencement of this action, the owners and holders of fifty-five (55) of the said bonds then outstanding did request, in writing, this plaintiff to commence this action, and did, in writing, express their election and option that the whole principal sum mentioned in each and all of the mortgage bonds then outstanding should forthwith become due and payable.

And plaintiff avers that, by reason of said default, resolution and notice of election and option, the entire principal sum of each and all of the said bonds did then, on the 2d day of October, 1894, mature and become payable.

13 VII.

That, as this plaintiff is informed and believes and so avers the fact to be, the property mortgaged to it and set forth in said mortgage and in Exhibit "B" hereof is insufficient to discharge the mortgage debt, as aforesaid, and cannot, in all probability, be sold for enough to pay the said ninety-nine (99) bonds, or said sixty-six (66) bonds, and the costs and expenses of this proceeding.

That the said canal is in the receipt of an income from the sale and rentals of water and must be operated as a whole, and kept in repair and under one management, or it will be entirely lost, and all the water rights and franchises possessed by the canal company will be forfeited from nonuser, and said franchises will be forfeited and annulled and the value of said canals destroyed in case the diversion and distribution of water thereby is suspended or discontinued.

That, therefore, the appointment of a receiver of said property, with power to control and manage the said canals and all of them, is necessary for the protection of said bondholders, by this Court in this proceeding.

Wherefore, plaintiff prays:

1. That this Honorable Court, upon the filing of this complaint, appoint some suitable person a receiver in this action, to take charge of the said mortgaged property and to maintain and operate said canals, pending this action and until final sale under any judgment of foreclosure herein, under the directions of this Court and
14 with such powers and authority as this Court, by its order, may from time to time confer upon him.

2. That this Court, by its decree, ascertain and determine what

and how many bonds of the series described in said mortgage have been lawfully issued and are now outstanding and unpaid, and declare that the entire principal sum of said bonds so found to be issued is now due and payable; and that the Court further, by said decree, fix and determine the amount of money due for principal and interest upon said bonds and enter judgment therefor against the said Woodbridge Canal and Irrigation Company in favor of this plaintiff, as trustee for said bondholders; and that this Court further, by its decree, fix and determine a suitable attorney's fee for payment of the services of the plaintiff's attorneys in this action, and further fix and determine the amount to be paid this plaintiff as compensation for its services as such trustee; and that this plaintiff may have judgment against the Woodbridge Canal and Irrigation Company for the amount found due for principal and interest on said bonds, and of said attorney's fee, trustee's commissions and costs and expenses of this action.

3. That further, by said decree, this Court shall order all of said franchises, canals, lands and other mortgaged premises and property to be sold by the marshal of the said Northern Judicial District of the State of California, at public auction, in accordance with law and with the course and practice of this Honorable Court; that the proceeds of said sale may be applied in the payment of
15 the expenses of sale and of the costs in this action, and of said trustee's commissions and counsel fees, and in the payment of the amount found due by this Honorable Court upon said outstanding bonds to the persons holding the same; that said defendants and each of them and all persons claiming or to claim by, through or under them, and each of them, subsequent to the execution of said mortgage, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all right, title, claim or equity of redemption in the said mortgaged property and premises, and every part thereof; that the plaintiff or any other party to this suit, or any bondholder, may become a purchaser at such sale; that the marshal execute deeds to the purchaser or purchasers; and that said purchasers be let into the possession of the property bought by them, on production of such deed; and that such other and further relief may be by said decree given in the premises as to this Court shall seem meet and agreeable to equity.

And may it please your Honors to grant unto this plaintiff a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said defendant, the Woodbridge Canal and Irrigation Company, therein commanding it on a day certain therein to be named and under a certain penalty, to be and appear before this Honorable Court, then and there to answer (but not under oath) all and singular the premises and to stand to, perform and abide by the said order, direction and decree, as may be made against it in the premises, as shall seem meet
16 and agreeable to equity and good conscience.

And the complainant, as in duty bound, will ever pray, etc.

PAGE, EELLS & WHEELER,
Solicitors for Plaintiff.

EXHIBIT "A."

This indenture, made on the seventeenth day of July, one thousand eight hundred and ninety-one, between the Woodbridge Canal and Irrigation Company, a corporation duly created and organized under the laws of the State of California, and having its principal place of business in the city and county of San Francisco, in said State, and the location of its works in the county of San Joaquin, in said State (hereinafter called "the company"), party of the first part, and the Atlantic Trust Company, a corporation duly organized and existing under the laws of the State of New York, and doing business in the city of New York, as trustee (hereinafter called "the trustee"), party of the second part, witnesseth:

That whereas, the said Company is now the lawful owner of a certain irrigating canal, flume and head works in the County of San Joaquin aforesaid, and of various lands, tenements, hereditaments, privileges, franchises, rights of way, water rights and other easements, contracts, fixtures and property thereunto appertaining, and hereinafter more particularly described, enoveyed and assigned;

17 And whereas, the Company is desirous of fully completing and equipping the said canal and head works in the Mokelumne River, in accordance with the plan of its Chief Engineer, so as to enable the said Company to furnish water for the thorough and complete irrigation of about one hundred thousand acres of farming land, lying south and west of the said river, in said San Joaquin County;

And whereas, for the purpose of securing money for the objects aforesaid, and for the maintenance and operation of the said canal, and for the payment of said Company's existing indebtedness, and the general transaction of its business, the said Company desires to borrow the sum of one hundred thousand dollars;

And whereas, at a special meeting of the stockholders of said Company, duly called and held for that purpose on the 11th day of July, 1891, at the office of the Company, in the City of San Francisco, and State of California, it was duly resolved, by a vote of more than two-thirds in interest of said stockholders, that the said Company be authorized to borrow said sum, and to issue its bonds as hereinafter described, for said amount, and to execute its mortgage, or deed of trust, to secure the same, as may more fully appear by a reference to the said resolutions entered upon the minutes of the Company.

And whereas, the said Company, to that end, is about to execute and to place in the hands of the said Trustee, to be issued, certified and delivered, as shall be directed by resolution of the Board

18 of Directors of said Company, its one hundred corporate bonds of one thousand dollars each, numbered consecutively from one to one hundred, both inclusive, with semi-annual coupons or interest warrants attached, and with certificates to be signed by the said Trustee, all of which bonds, coupons and certificates are in the following form, that is to say:

(*Form of Bonds.*)

UNITED STATES OF AMERICA, *State of California.*

No. ——. $1000.

First Mortgage Convertible Gold Bond of the Woodbridge Canal and Irrigation Company.

The Woodbridge Canal and Irrigation Company, a corporation duly organized under the laws of the State of California, acknowledges itself indebted to the bearer, or to the registered owner thereof, in the sum of One Thousand Dollars, which it promises to pay in the gold coin of the United States of America, of the present weight and fineness, on the first day of September, in the year nineteen hundred and one, at the office of the Atlantic Trust Company, in the City of New York, with interest thereon, at the rate of six per centum per annum, payable semi-annually, at the same place, upon presentation and surrender of the coupons hereto annexed, on the
19 first day of March and September, in each year, as they respectively become payable, so long as the principal remains unpaid.

This bond is one of a series of one hundred bonds, of similar amount, tenor and date, which are secured by a mortgage or deed of trust, bearing date this day, executed and delivered by the Woodbridge Canal and Irrigation Company to the Atlantic Trust Company, as Trustee, conveying and assigning to the said Trustee all its corporate property and franchises now owned or hereafter acquired.

Any lawful holder of this bond, upon presenting the same at the office of the said Trustee, with all unmatured coupons attached thereto, may have the same registered in his own name, or that of any other person, in a book to be kept for that purpose, and such name, with the date of registry, shall be endorsed upon the bond by the said Trustee. From the date of such registry until, by a like endorsement, it be again made payable to bearer, such bond shall be transferable only by a written transfer thereof on the books of the Trustee, such transfer, and the date thereof, to be in like manner endorsed upon the bond, and while so registered all payments becoming due thereon, either for principal or interest, shall be paid only to such registered owner or to his order. Successive registration and transfers to bearer may be made at the option of any lawful holder and owner of this bond.

It is expressly agreed that in case default shall be made in the payment of any semi-annual installment of interest on the
20 day whereon the same shall fall due, as herein provided, or in the performance of certain covenants contained in said mortgage or deed of trust, and should default in any of such cases continue for the space of six months, then, and in either, of such cases, the principal sum herein mentioned may, as in said mortgage or deed of trust provided, immediately become due and payable, anything herein contained to the contrary notwithstanding.

At any time between the first day of July, 1894, and the first day of January, 1895, this bond, upon presentation and surrender thereof, to the said company with all unmatured coupons attached, may, at the holder's option, be converted into the capital stock of this company at par, and the holder in such case shall be entitled to receive in payment of this bond one thousand shares of said capital stock of one dollar each, said stock being reserved in the treasury of the company for that purpose.

This bond is also entitled to the benefits of the sinking fund in said mortgage or deed of trust provided for. The holder of this bond, by acceptance thereof, hereby waives any personal claim or demand against the stockholders of said company, for the indebtedness incurred hereby.

This bond shall not become valid or obligatory until the certificate endorsed hereon shall have been duly signed by or in behalf of the said Atlantic Trust Company as trustee.

In witness whereof, the Woodbridge Canal and Irrigation
21 Company has caused these presents to be sealed with its corporate seal, and to be signed by its president and attested by its secretary, and the annexed coupons to be executed with the engraved signature of its secretary, this — day of ——, one thousand eight hundred and ninety-one.

—— ——, *President.*

Attest: —— ——, *Secretary.*

(*Form of Coupon.*)

$30.

On the first day of —— 18—, the Woodbridge Canal and Irrigation Company will pay, at the office of the Atlantic Trust Company, in the City of New York, upon presentation and surrender of this coupon, to the bearer, or to the registered owner hereof, thirty dollars in United States gold coin for six months' interest then due on Bond No. ——.

—— ——, *Secretary.*

(*Form of Trustee's Certificate.*)

The Atlantic Trust Company hereby certifies that the within bond is one of the bonds issued under and in pursuance of a certain mortgage or deed of trust, dated —— and duly executed and delivered to said Company, as Trustee, by the Woodbridge Canal and Irrigation Company.

THE ATLANTIC TRUST COMPANY,
By —— ——, *President.*

22 Now, therefore, this indenture witnesseth, that for the purpose of securing the said bonds for $100,000, to be issued as herein provided for, and the interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the premises, and of ten dollars to it in hand paid by the said

Trustee, at or before the execution and delivery of these presents receipt whereof is hereby acknowledged, the said Woodbridge Canal and Irrigation Company has bargained, sold, granted, conveyed, assigned and set over, and by these presents does bargain, sell, grant, convey, assign and set over unto the said Atlantic Trust Company, as Trustee, its successors and assigns, the entire corporate property of said Woodbridge Canal and Irrigation Company, and all its lands, tenements, hereditaments, privileges, franchises, rights of way; flowage and riparian rights, easements and fixtures now owned or hereafter to be acquired, and all its canals, flumes, headworks, gates, dams, bridges, etc., now constructed or to be hereafter constructed, extending from the present point of diversion, in the Mokelumne River, in the town of Woodbridge in San Joaquin County aforesaid, in a westerly direction, to Taison and New Hope, in said county, and in an easterly and southerly direction to the Calaveras River, with all other or branch canals that may be hereafter constructed within said territory, south and west of the Mokelumne River, and all the estate, right, title and interest, claims and demands, rights of way, and other easements, whether at law or in equity of the said Company of, in and to the same, and each and every part
23 and parcel thereof; and also all buildings, fixtures and personal property thereon, or belonging to said Company, and all receipts, incomes and profits which said Company shall derive on account of any contract or agreement for the transfer of water rights, as appurtenant to specified lands, excepting and not including the annual rentals for the use of said water and interest on such contracts or agreements.

To have and to hold the above granted premises and property with the appurtenances, unto the said Trustee, its successors and assigns, in trust and upon the trusts, uses and purposes hereinafter expressed of and concerning the same, for the use and benefit of any and all persons or corporations, who shall hereafter at any time become the purchasers, holders or owners of any of said bonds, subject to the terms, provisions and stipulations in said bonds contained, and also subject to the possession and management of said canal system and property by said Company, its successors, assigns or lessees, so long as no default shall be made in the payment of either interest or principal of said bonds, as herein provided, and so long as the said Company shall well and truly observe, keep and perform all and singular the covenants, agreements, conditions, and stipulations in said bonds, and in this indenture, contained and set forth, and which are to be observed, kept and performed by and on the part of said Company.

Article First.

It is further agreed that the Company, with the consent in writing of the Trustee or its successor or successors, may sell and
24 convey any lands or other property herein mortgaged and not necessary or required to be retained for the convenience and use of the Company, and that the proceeds of said sales whenever they amount to the sum of one thousand dollars, or more, shall

be applied to the purchase and cancellation of one or more of said mortgage bonds as hereinafter provided for, or of any lien which may be a prior lien upon the premises mortgaged. And the Trustee shall then be authorized to release the land or other property thus sold and conveyed from this mortgage; or in lieu of purchasing and canceling said bonds, the proceeds of said sale may be invested under the sanction and with the approval of the Trustee, in the purchase of other property, real or personal, required for use by said Company, which said other property shall be deemed as embraced in, and covered by, this mortgage.

Article Second.

It is further mutually agreed, that until the 1st day of January, 1895, unless sooner exchanged in payment of bonds as herein provided for, the Company will reserve in its Treasury one hundred thousand shares of the capital stock of this Company of the par value of one hundred thousand dollars, being the increase thereof duly authorized by the stockholders of said Company at a meeting held and called for that purpose on the 11th day of July, 1891.

At any time between the 1st day of July, 1894, and the 1st day of January, 1895, upon the presentation and surrender to the Company of one or more of the bonds herein provided for, together with
25 all the unmatured coupons thereto attached, the Company will deliver to the person or persons so surrendering said bonds in full payment therefor, a certificate or certificates representing one thousand shares of said capital stock so reserved for each bond of the face value of $1,000, and all unmatured coupons annexed, and all bonds surrendered shall be forthwith canceled.

Article Third.

It is further mutually agreed that all moneys received by the Company on account of any contract or agreement, now executed or hereafter to be executed, for the transfer of water rights as appurtenant to specified lands, excepting interest on such contracts or agreements, and rentals, as the same accrue and are received, to the amount of the bonds sold and delivered, shall be paid by the Company to the said Trustee, to be held by the Trustee as a sinking fund for the redemption of the bonds herein provided for. And whenever and as often as the sum of five thousand dollars or more shall be held by the said Trustee in said sinking fund, the Trustee shall, whenever requested in writing by the Company, forthwith give notice by publication in a newspaper, published in the City of New York, and a newspaper published in the City of San Francisco, for such time as it may deem advisable, that it will purchase and redeem out of said sinking fund, after deducting the expenses of said publication, bonds, to the extent of the cash available in said fund, at a price not exceeding par and accrued interest. And such
26 bonds as may be purchased and redeemed by the Trustee shall be forthwith canceled; and should none be offered, the Trustee shall retain the moneys in said sinking fund at interest,

until another like sum of five thousand dollars shall be paid into said fund, in which case the same proceedings shall be again taken as above set forth.

Article Fourth.

The Company covenants and agrees to use the bonds herein provided, for the following purposes only:

To provide funds to extend and thoroughly complete, equip and maintain the canal and its branches; to erect a dam or dams in the Mokelumne River, and maintain the same, to pay and discharge the floating debt of said Company, and to provide the necessary funds for the general expenses of the Company.

And the Trustee shall, from time to time, upon the joint order of the President and Secretary of the Company, making request therefor, issue and deliver to the persons named in said order, the bonds, or any of them herein provided for.

Article Fifth.

And the Company does hereby covenant, promise and agree for itself, its successors and assigns, to and with the Trustee and its successor or successors, that the said Company will well and truly pay each and every of said bonds issued by it and secured by this mortgage, together with the semi-annual interest, at the rate of six per cent. per annum, at the times, in the manner, and at the
27 places specified therein, without deduction for any cause.

And in case the Company shall, for the space of six months, make default in payment of said semi-annual interest to become due on any, either, or the whole of said mortgage bonds, then after the expiration of said six months from the time it became due, and without demand or notice, at the election or option of the majority in interest of the holders of said bonds then issued and outstanding expressed in writing, the whole principal sum mentioned in each and all of said mortgage bonds then outstanding, shall forthwith become due and payable, and the lien and encumbrance hereby created for the security and payment thereof may at once be enforced.

Article Sixth.

It is further agreed in case of default in the payment of the semi-annual interest of the said bonds for the space of six months or of any tax or assessment for the same period, that the Trustee and its successors are hereby expressly authorized and empowered, upon the request in writing of the owners or holders of the majority of said bonds, then outstanding, or if the principal of the bonds shall be due, upon the request of the holders of a majority of the bonds outstanding, to enter into and upon, and to take actual possession of all the property, real and personal, and rights, franchises and privileges of the premises hereby conveyed, and each and every part thereof, and by themselves, or by their attorneys or agents, have, hold,
28 use and enjoy the same, and from time to time make all repairs and replacements, and all useful alterations, additions

and improvements thereto, as fully as the Company might have done before such entry, and to collect and receive all tolls, incomes, rent, issues and profits of the same and of every part thereof. The Trustee and its successor or successors shall and may, and hereby are expressly authorized and empowered on such default to sell at public auction, to the highest bidder, the entire property, real and personal, rights, franchises and privileges herein conveyed. Said sale shall be held either in the City of Stockton, or the City of San Francisco. At least two months' notice shall be given of the time, place and terms of said sale, by advertising the same in one or more newspapers of good circulation, in the City of San Francisco, and wherever else required by law, and continuing such advertisement at least once a week, until the time of sale; and the Trustee may, at its discretion, adjourn said sale from time to time, giving reasonable notice of the time and place where it will take place, and as the attorney or attorneys in fact of the Company, or its successors and assigns, shall have full power and authority to make, execute and deliver to the purchaser or purchasers thereof good, valid and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee simple or otherwise, of the entire property herein conveyed, and all the rights, franchises and privileges of the Company, or its successors or assigns, which conveyance or conveyances, transfer or deeds, shall vest in the purchaser or purchasers all the right, title, inter-
29 est and estate whatsoever, reversionary, or in possession, or which they may be entitled to receive, have or hold of the Company; and said sale shall be a complete and perpetual bar or estoppel, both in law and in equity, against the Company, its successors and assigns, and all persons or parties lawfully claiming by, from or under it or them, in anywise or manner whatsoever, and the said Company hereby covenants and agrees to waive, and expressly covenants and agrees that neither this Company, nor its successors, shall have or claim any advantage of any valuation, appraisement or extension.

The amount of the purchase money on said sales may be paid and satisfied in whole or in part by the outstanding mortgage bonds, and matured and unpaid coupons, or any of them secured hereby; and said bonds and coupons shall be received in whole or part payment and satisfaction by the Trustee, its successor or successors, according to their value, to be ascertained and determined by the net amount arising from said sale, provided however that, if during the pendency of such proceedings, or of any foreclosure proceedings for nonpayment of interest coupons, the said interest be paid, together with the expenses of the legal proceedings then taken, all foreclosure or other proceedings shall then terminate and be discontinued.

Article Seventh.

Out of the moneys received from any tolls, income, rents, profits and earnings of said canal and premises, or out of the pro-
30 ceeds of said sale, so to be made as aforesaid, or the Sinking Fund as above provided for, after first deducting the expenses, disbursements, costs, charges, and counsel fees, incurred in

and about the conducting of said sale, or the working and operating said Canal, including the compensation and commission of said Trustee in and about the execution of this tru[illegible] and all expenses of repairs, replacements, alterations, additions and improvements, and all payments for taxes, assessments, charges or liens on said premises, or any part thereof, the Trustee shall, if the amount be sufficient for that purpose, pay said mortgage bonds, or so many of them as shall be outstanding and unpaid, together with all interest then due upon the same; and if the amount be insufficient, then it shall divide the same pro rata among the outstanding bonds, and the surplus of all such moneys or proceeds of sale, if any there be, shall be paid to the Company, or its successors or assigns.

Article Eighth.

Nothing herein shall be construed as limiting the right of the Trustee to apply to any competent Court for a decree of foreclosure and sale under this indenture, or for the usual relief in such proceedings, and the said Trustee, or its successor, may, in its discretion, so proceed.

Article Ninth.

The said Trustee shall be entitled to a reasonable compensation for its services rendered under the trusts herein created, and
31 also to reimbursement for all expenses, legal or otherwise, necessarily incurred by it in administering the same, and all such compensation and expenses, are secured hereby.

In case it shall be required by the holders of the bonds secured by this indenture to enforce any of their rights hereby secured, the said Trustee shall not be required to incur any expense or liability in connection therewith, until satisfactorily indemnified therefor, and all powers in these presents conferred upon the Trustee (except as otherwise herein specifically provided) shall be deemed discretionary, and it shall incur no liability in exercising or declining to exercise such discretionary powers, provided it acts in good faith in regard thereto.

Article Tenth.

And it is further agreed that the Trustee, or its successor, may appoint and employ, at the expense of the said Company, all such attorneys or other agents, as may be necessary in the execution of any of the trusts herein declared, and shall not be answerable for the defaults or other misconduct or neglect of such attorneys, or other agents, unless chargeable with culpable negligence in their selection.

Article Eleventh.

And it is further agreed, that in the case of the death, removal, resignation, incapacity or insolvency of the Trustee or its successor, or in case two-thirds in interest of the holders of outstanding bonds at any time so elect, a majority in interest of the outstanding bondholders may, by a writing under their hands and seals
32 appoint and designate one or more competent persons or corporations to fill the vacancy so occurring in manner afore-

said; and until the bondholders make such selection, then the President of the Company, with the consent in writing of the owners or holders of one-tenth of all of said bonds outstanding may apply to a Judge of any Court of competent jurisdiction, who shall appoint one or more persons to fill the vacancy until the bondholders make an appointment; and in either case the person or persons selected shall have and possess, and be vested with, the same rights and powers as a Trustee or Trustees, as he or they would have had or possessed or been vested with, had he or they been originally made a party or parties to this indenture, and shall perform said duties in all respects; and until such appointment shall be so made, in manner aforesaid, said remaining surviving, acting or competent Trustee shall have full power and authority to execute each and all trusts hereby created.

In case at any time thereafter, two or more Trustees should be appointed in the place of the one herein named, and there should thereafter become a vacancy by the death, resignation or removal of one or more of said Trustees, the remaining Trustee or Trustees, until such time as another may be appointed shall perform all the duties of his trust, and during such time all acts done by him shall be as valid as if performed by all the Trustees.

33

Article Twelfth.

And the Company, for itself and its successors and assigns, hereby covenants and agrees for the consideration aforesaid, to execute and deliver any further deed or deeds to the Trustee, its successor or successors, reasonable and necessary to accomplish the purpose and intent of this indenture, particularly for the conveyance of any right, interest or property acquired by said Company subsequent to the date of this agreement.

Article Thirteenth.

The Company further agrees, that it will well and truly pay and discharge each and every tax, or assessment, which may, from time to time, be lawfully levied upon the said property or franchise, the lien of which might or could be held superior to the lien of this indenture, to the end that the priority of the lien created by this indenture may at all times be fully sustained.

Article Fourteenth.

The trustee hereby accepts the trusts herein contained and undertakes and agrees to fulfill all the duties and obligations hereby imposed upon it in accordance with the true intent and meaning of this indenture.

Article Fifteenth.

The said Company, for itself, its successors and assigns, the above granted and bargained premises unto the said Trustee, its successors and assigns, will forever warrant and defend against all lawful claims and demands whatsoever, against the same.

34 Article Sixteenth.

Provided always, and this grant and conveyance is upon the express condition that upon the payment in full of such of said bonds, as shall have been issued and sold, and the interest due thereon and upon the surrender thereof to the Company, and due proof of such payment and surrender to the satisfaction of the Trustee or its successor, or at any time before any of said bonds are sold and issued, on the demand in writing of said Company for the cancellation of said deed of trust, then the estate, title and interest of the said Trustee, or its successor, shall cease, determine and become void, and said Trustee shall, upon the request of the Company, its successors or assigns, duly execute and deliver such proper release or reconveyance as may be necessary for the purpose of revesting the record title to said property in the Company, its successors or assigns, free from all liens, trusts or encumbrances hereby created.

In witness whereof, the said parties of the first and second parts have caused these presents to be sealed with their corporate seals and subscribed by their respective presidents, and attested by their respective secretaries, on the day and year first above written.

The word "Trustee" having been first stricken out, and the word "Company" inserted in lieu thereof in line (19) nineteen of page (2) two hereof.

[CORPORATE SEAL.]

WOODBRIDGE CANAL AND IRRIGATION COMPANY,

By M. V. B. WATSON, *President.*

35 Attest:

M. T. MOSES, *Secretary.*

ATLANTIC TRUST COMPANY,

[CORPORATE SEAL.] By W. H. MALE, *President.*

Attest:

J. S. SUYDAM, *Secretary.*

Signed, sealed and delivered by the above-named Woodbridge Canal and Irrigation Company in the presence of

LINCOLN SONNTAG.

And by the above-named Atlantic Trust Company in the presence of

STANLEY W. DEXTER.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this seventeenth day of July, in the year one thousand eight hundred and ninety-one, before me, Lincoln Sonntag, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared M. V. B. Watson, known to me to be the president of the corporation "Woodbridge Canal and

Irrigation Company," that executed the within instrument, and M. T. Moses, known to me to be the secretary of the said corporation, and they each severally acknowledged to me that such corporation executed the same.

[NOTARIAL SEAL.] LINCOLN SONNTAG,
Notary Public.

36 STATE OF NEW YORK,
City and County of New York, ss:

On this fourth day of August, in the year one thousand eight hundred and ninety-one, before me, Stanley W. Dexter, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared W. H. Male, known to me to be the president of the corporation "Atlantic Trust Company," that executed the within instrument, and J. S. Suydam, known to me to be the secretary of the said corporation, and they each severally acknowledged to me that such corporation executed the same.

[NOTARIAL SEAL.] STANLEY W. DEXTER,
Notary Public.

[Endorsed:] Recorded at Request of Atlantic Trust Co. August 10th, 1891, at 20 min. past 2 o'clock P. M., in book "A," vol. 74, 361 of Deeds, San Joaquin County Records.

(Here follows Exhibit "B," Schedule of Properties.)

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Charles P. Eells, being duly sworn, deposes and says: That he is one of the attorneys for complainant, the Atlantic Trust Company, and makes this affidavit on its behalf; that said complainant has no officer or other agent in the State of California; that he has read the foregoing bill of complaint and knows the contents thereof;
37 that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters he believes it to be true.

CHARLES P. EELLS.

Subscribed and sworn to before me this 3d day of October, 1894.

W. B. BEAIZLEY,
Commissioner U. S. Circuit Court,
Northern District of California.

[Endorsed:] Bill of Complaint in Equity. Filed October 3, 1894. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Defendant.

Order Appointing Receiver.

The bill of complaint having been filed in this action for the foreclosure of a mortgage upon the canals and other properties of the Woodbridge Canal and Irrigation Company by the plaintiff as trustee for the bondholders of said canal company, which
38 complaint is duly verified; and it appearing to said Court therefrom that a case for the appointment of a receiver exists in this action, and holders of a large amount in value of the bonds secured by said mortgage having requested the appointment of E. C. Chapman to be such receiver, and the defendant Woodbridge Canal and Irrigation Company being present by its counsel and consenting to this order; and it further appearing that said E. C. Chapman is in all respects a suitable and competent person to be appointed such receiver—

Now, on motion of counsel for said plaintiff, it is ordered that E. C. Chapman, of the city and county of San Francisco, be and he is hereby appointed the receiver of all and singular the property, canals and franchises of the defendant, the Woodbridge Canal and Irrigation Company, including all the property mentioned and described in the complaint in this action, with all the records, books, papers and accounts of said defendant corporation, in anywise appertaining to the business thereof.

The said receiver, before entering upon his duties, shall be sworn to perform them faithfully, and shall also execute and file with the clerk of this court an undertaking with one or more sufficient sureties to be approved by the Court, in the sum of ten thousand dollars, to the effect that he will faithfully discharge the duties of receiver in this action, and will obey the orders of the Court therein. On said bond being filed and approved by this Court or a Judge thereof, and said oath being taken and filed, said receiver shall forthwith
39 enter upon the performance of his duties. It is further ordered:

I.

As soon as may be after he shall have entered upon the performance of his duties, the said receiver shall make and file with the clerk of this court a true, full and complete inventory of all and singular the property of the said Woodbridge Canal and Irrigation Company, real, personal and mixed, of which he is hereby appointed a receiver, and of which he shall have taken possession.

Said receiver shall continue the operation of the main and branch canals of the said Woodbridge Canal and Irrigation Company in the usual and ordinary course as the same is now operated, discharging contracts for water supplies entered into by said company

so far as practicable; collecting the rents and tolls of said canals, and the moneys payable under water contracts, and keeping the premises and property, both real and personal, in good condition and repair. To the same end, he shall, from time to time, employ and discharge all needful assistants, servants, agents and employees, at such salaries and compensation as he may deem reasonable, and pay for all such needful labor and supplies and materials as may seem to him to be necessary and proper in the exercise of his sound discretion, for carrying on and keeping in repair said canals, with leave to apply to the Court from time to time as he may be advised for instructions in the premises. He shall have the power
40 to commence and prosecute any suits or actions he may deem it proper to commence hereafter, either in the name of the company or in his own name as receiver, as he may be advised, and to be substituted in place of said Woodbridge Canal and Irrigation Company in any suits now pending, which may affect the property whereof he is receiver. He shall do whatever may be needful to preserve and maintain the corporate franchises of said defendant corporation and its rights to the use of the water and all its property, until final judgment in this action, and to defray the necessary and proper expenses incident thereto.

III.

The said receiver shall keep a full, true and particular account of all his acts and doings as such receiver, of all the property, rents, revenues and income, and of all his payments and disbursements in the performance of the duties imposed by this order; and he shall file such account from time to time as this Court may direct. He shall keep all balance of moneys in his hands on deposit in some bank or banks of approved credit, subject to his order, and he shall not pay out but shall keep, subject to the further order of this Court, all such moneys, except in so far as payments and disbursements are authorized by the terms of this order.

The said defendant the Woodbridge Canal and Irrigation Company, and each and all of the officers and agents of said company, are directly commanded and enjoined to deliver up and sur-
41 render to said receiver, when he shall have become qualified according to the terms of this order to enter upon his duties, all and singular the premises and property whereof he is so appointed receiver.

Done in open court, this 3d day of October, 1894.

W. B. GILBERT, *Judge.*

Supplemental Order of Final Appointment.

And now upon this third day of October, A. D. 1894, Edgar C. Chapman, the receiver heretofore appointed herein, having filed herein his bond in the sum of ten thousand (10,000) dollars, with Benjamin G. Lathrop, Jr., and Edgerton F. Card, as sureties, in accordance with the decree entered herein, dated October third, 1894; and the said bond having been approved by the Court—

It is therefore ordered and decreed by the Court, that said receiver be and he is hereby invested with all the powers and authority, and charged with all the duties in said decree mentioned, and he is hereby authorized and directed to immediately enter upon the discharge of his duties as aforesaid and to take immediate possession of all and singular the property, rights, and franchises in said decree mentioned.

Dated October third, 1894.

W. B. GILBERT, *Judge.*

[Endorsed:] Filed October 3, 1894. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

42 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,

vs.

WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

Report of Receiver.

(Filed December 29, 1894.)

To the Honorable, the Justices of the Circuit Court of the United States, of the Ninth Judicial Circuit, Northern District of California:

E. C. Chapman, receiver appointed by the Court in the above-entitled cause, now comes and reports to the Court as follows:

Upon receiving the order heretofore made by the Court in this cause appointing me receiver therein, and on the 3d day of October, 1894, I duly qualified as such receiver and entered upon the discharge of my duties as such. On the 4th day of October, 1894, I visited the office, property and works of the Company at Woodbridge in the county of San Joaquin, and was there by the superintendent in charge, placed in charge and possession of the properties of the corporation described in the schedule of properties handed to me at the time of my appointment, to wit:

43 Those certain irrigation canals situated and being in the county of San Joaquin, State of California, in township three (3) north of range five, six and seven (5, 6, 7) east, and being known and described as follows, to wit:

That certain dam built and constructed in and across from either bank of the Mokelumne river, in section 34, township 3 north of range — east.

*Franklin Canal, 601 miles.
Main Canal, East Branch, 9,880 miles.
East Branch, Excavation No. 3, 4,640 miles.
Davis ——, 2,408 miles.
North Branch, 2,043 miles.
Spanker Ditch, 1,505 miles.
West Branch Canal, 4,570 miles.
Carr Ditch, 410 miles.
Swain Lateral, 495 miles.
Castle Lateral, 653 miles.
Weber Lateral, 264 miles.
Harshner Canal, 1,070 miles.
Parsons Canal, 500 miles.

The above canals, ditches and laterals being part of the system located as its point of beginning at the dam in Mokelumne river at the town of Woodbridge in the east half of section 34, township 4 north of range —— east.

II.

Certain riparian rights, in all eighteen, along said Mokelumne river above and below the dam of the Woodbridge Canal and Irrigation Company.

44

III.

Certain grants of right of way lying and being within said township 5 north of ranges 6, 5 and 7 east, and township 4 north of ranges 5 and 6 east, numbering sixty-three in all, and having an aggregate acreage of 330.43 acres.

IV.

Certain contracts from the owners of the lands lying above said dam granting permission to said Woodbridge Canal and Irrigation Company as assignee to construct, maintain, etc., said dam in said river; numbering eleven in all.

V.

Certain parcels of real property situate and being in said county of San Joaquin, State of California, and bounded and particularly described as follows, to wit:

a. Being a small piece of land adjoining Block 2 in the town of Woodbridge, known as the "Mill Property," being the land on which was erected the old flouring mill and building heretofore sold to C. C. Blair; and further described as Lots 4, 5, and 6 in block F of Wood's Survey of the town of Woodbridge.

b. 13.88 acres of land, situate, lying and being in said San Joaquin County on the North Bank of the Mokelumne river, immediately opposite said town of Woodbridge and immediately adjoining

*[These figures are apparently wrong, but they are as certified — rep.—The CLERK.]

the said dam of the said Woodbridge Canal and Irrigation Company, and known as and called the "Cowboy Tract."

c. Certain bottom lands along the north side of said river adjoining the dam and works of said company at Woodbridge, and lying on the north side of said Mokelumne river; comprising in all
45 96.95 acres, and known and described as the "Journmay Purchase."

d. Those certain bottom lands situate in said county of San Joaquin, and described as fractions No. 1 and 2 and the east half of the southwest quarter of section 32, township 4 north of range 7 east, M. D. B. and M.

VI.

Those three certain water rights and locations on the Mokelumne river at said Woodbridge, notices of which said locations were posted by Byron D. Beckwith on the bank of said river on the 22d, 23d, and 30th days of December, 1886, respectively, and filed in the office of the county recorder of San Joaquin County aforesaid on the 31st day of December, 1886.

VII.

Those three certain water locations and claims to water flowing into the Mokelumne river, particularly described as follows, to wit:

a. A claim to said water to the extent of 250,000 cubic inches per second at the point on the north bank of said river about 250 feet above and on the opposite side of where Green's mill formerly stood in the town of Woodbridge. Notice of which bearing date the 19th day of May, 1890, and recorded May 20th, 1890, in book "G," volume 8, page 251 of Miscellaneous Records of San Joaquin County, in the office of the county recorder of San Joaquin County.

b. A claim by one H. P. Perkins to said water to the extent of 345,600 inches, at the point where notice in writing was duly
46 posted, that point being a pine tree on the south bank of said river near a suspended water pipe which leads across said river. Said notice bearing date November 6th, 1890, recorded November 30th, 1890, in book "L" of Mining Claims, pages 544 and 545, in the office of the county recorder of Calaveras County.

c. A claim to said water to the extent of 400 cubic feet per second at the point where notice in writing was duly posted by Byron D. Beckwith, that point being on the north bank of the Mokelumne river, on a live oak tree about 300 feet north of a suspension pipe across said river; said notice being dated January 25th, 1892, and recorded January 26, 1892, in book "A" of Water Rights, page 186, in the office of the county recorder of Amador County.

VIII.

All those certain pieces and parcels of land, being in the counties of Calaveras and Amador, and bounded and particularly described as follows, to wit:

The fractional southeast quarter of the southwest quarter of section 33, and fractional northwest quarter of the southwest quarter

of section 54, township 5 north of range 10 east, M. D. B. and M.; more particularly described in that deed made by Byron D. Beckwith to the Woodbridge Canal and Irrigation Company the 8th day of February, A. D. 1894, and recorded on the 27th day of June, 1894, in book "A," volume 83, page 78 of Deeds, San Joaquin County Records; and in volume 24 of Deeds at page 326, Calaveras
47 County Records; and recorded in volume 10 of Deeds at page 269 of the records of Amador County.

The said parcels of land containing in all 46.61 acres.

IX.

Certain tools and implements used in and about said irrigation canal in the maintenance of said works; office fixtures, three horses, one buggy and harness. Also about 13,000 feet of mixed lumber of uncertain value.

X.

Those certain promissory notes, payable to the Woodbridge Canal and Irrigation Company, and described as follows, to wit:

Note of A. M. Harshner, dated November 21st, 1892, for $400.00.

Note of E. J. and S. A. Parsons, dated January 31st, 1893, for $1,600.00.

Note of Helen Weber, C. M. Weber and Julia H. Weber dated May 28, 1894, for $3,946.02.

Note of Helen Weber, C. M. Weber and Julia H. Weber, dated May 28th, 1894, for $4,591.85.

Note of Helen Weber, C. M. Weber and Julia H. Weber dated May 28th, 1894, for $1,963.66.

Note of J. Bischofberger, dated May 28th, 1894, for $1,530.20.

Note of H. C. Heron, dated May 28th, 1894, for $1,854.25.

Note of Mrs. M. A. Shinn, dated May 28th, 1894, for $425.00.

48 Note of F. T. Coman, dated May 28th, 1894, for $648.00.

Note of A. M. Harshner, dated May 28th, 1894, for $400.

Note of T. E. Jones, dated June 25th, 1894, for $896.37.

XI.

All that certain right of way across a strip of land granted by J. J. Hinckley and wife to the Woodbridge Canal and Irrigation Company, along and over certain land of said Hinckley from the county road to the land acquired by said Woodbridge Canal and Irrigation Company on the 8th day of February, 1894, from Byron D. Beckwith hereinabove in this schedule specified.

I thereupon took charge of the office at Woodbridge and placed Mr. John Torey, Jr., a bookkeeper, in charge for me, with instructions to balance up the books and furnish me a trial balance and to furnish me a list of all bills receivable, securities and other papers belonging to or affecting the property of the corporation found in said office, or in the safe thereof. He proceeded to do so, and

among other things furnished me with a trial balance, a copy of which is hereto annexed, marked Exhibit "A," and made a part of this report; also a list of bills receivable, a copy of which is hereto annexed marked Exhibit "B" and made a part of this report; also a list of outstanding time checks issued to laborers and employees of said corporation, and appearing to remain unpaid a copy of
49 which list is hereto annexed marked Exhibit "C" and made a part of this report; also a list of deeds, conveyances, grants of right of way, licenses and other evidences of title, or rights to water, or rights of way, a copy of which list is hereto annexed marked Exhibit "D" and made a part of this report.

After balancing up the books and completing his labors at said office, and at the expiration of one month and four days after so placing Mr. Torrey in charge, I discharge- him from further service at that office, and placed the office and the properties theretofore under the charge of that office in charge of H. F. Mannion, as superintendent in charge under me.

Immediately after making these arrangements at Woodbridge I returned to San Francisco, and at the general office of the corporation demanded possession of all the books, papers, and properties of the corporation held at that office. These were promptly turned over to me, and the keys of said office were delivered to me, but being doubtful of my right to prevent the officers of the corporation from having access to the minute book and other strictly corporate books, I placed the secretary of the corporation in charge of said office, and he is still in said office in charge of said books, I however, having free access to same for purposes of information or any of the purposes required in the performance of my duties.

For the purpose of protecting said works and property and of preventing the destruction and waste thereof, I have found
50 it necessary to employ and have employed in addition to the bookkeeper aforesaid, one man to have the charge of and preserve the rights of the property of the corporation at the upper water claim on the Mokelumne river near Campo Seco who is employed at a salary of $2.50 per day; also another on the lower location near the town of Woodbridge in San Joaquin County at a salary of $2.00 per day, also a night watchman at the dam near Woodbridge at $2.50 per day; also the superintendent in general charge of the works, whose services are worth about $5.00 per day; also a young man to assist said superintendent at $2.50 per day; I also found it necessary to employ the former assistant superintendent of the works for the period of two weeks and at a cost of $50.00 to go over the entire works with me and specifically point out the property of the corporation. I have also been compelled to cause certain repairs to be made upon the dam near Woodbridge, which has been done at a cost of $297.04 exclusive of the service of the superintendent.

As such receiver there has come into my possession the sum of $875.73 in money, the property of said corporation, and my disbursements as such receiver have been as follows:

To paid out for work done for labor at the dam at Woodbridge as above stated	$297.04
To paid for Wells, Fargo envelopes	.10
To paid expressage on time check mem. sent to the Secretary upon Mr. McAllister's telegraphic request	.25
To paid for stamps	.50
51	
To paid for P. O. Box	.40
To paid express charges by river express on typewriter, Stockton to San Francisco and return	.70
To paid W. C. Pidge	2.00
To car fare, 2.95; livery, 1.00; meals, .50	4.45
To paid telegram	1.00
To candles, .15; tool sharpening, .25	.40
To stamps	.50
To paid J. J. Hinckley	40.00
To paid Elliott Bray	30.00
To paid N. I. Baldwin	50.00
To paid John Torrey	100.00
To paid taxes	156.91
To pump handle, .25; hotel bill, Hinckley's, 2.00	2.25
To harness hire	.50
To stamps, 1.00; telegram, .25	1.25
To paid Elliott Bray	5.00
To board bill	22.50
To fare to Stockton and return	.90
To paid J. Torrey, Jr.	13.33
To paid F. M. Limbaugh	15.00
To paid for rent of office	4.00
To paid H. F. Mannion	70.88
To trips to Stockton and Campo Seco	82.80
	$903.66

52 *Recapitulation.*

Total paid out	$903.66
Total cash received	$875.73
Balance due me	$27.93

And the said receiver respectfully represents to the Court that he is without funds to reimburse himself for the balance of cash expended as aforesaid, or to pay the accruing expense for men in his employ, or to pay his own personal expenses in attending to the business, or wherewith to pay counsel for services rendered in his behalf, and he prays the court for an order authorizing him to borrow the sum of seven thousand five hundred ($7500.00) dollars to be used for the purposes aforesaid, and accounted for to the Court.

Dated this 26th day of Dec., 1894.

E. C. CHAPMAN, *Receiver.*

FOX, KELLOGG & GRAY,
Attorneys for Receiver.

53 EXHIBIT "A."

Trial Balance.

From

Books of the Woodbridge Office of the Woodbridge Canal and Irrigation Company, showing the condition of the various accounts as written up to the time when the Receiver of said Company, under appointment from the United States Circuit Court, took possession of the affairs of said Company on the morning of October 4th, 1894.

Profit and Loss	.....	.65
Construction	11,735.53	
Canal Expense	9,920.99	
Discount	.....	1.25
Office Fixtures	179.75	
Lumber	10,748.10	
Material	1,964.29	
Tools and Implements	1,097.45	
Pile Setting	958.75	
Real Estate	15,680.00	
Bridges and Culverts	2,408.31	
Exchange and Interest	.....	373.19
Feed Account	650.90	
Rights of Way	9,416.76	
Repairs	907.13	
Franklin Canal	1,256.22	
B. A. Laws	200.00	
J. C. Thompson	.....	7.00
Water Rights	.....	58,211.99
54		
Bank of Lodi	6.29	
Freight	448.91	
Ah Hong	.....	2,329.50
W. H. Williams	.....	1,646.92
San Francisco Office	.....	85,891.48
Ezra Fiske	19.05	
Chris Franklin	13.71	
John Lane	.....	.25
Labor	45,928.40	
East Branch Canal Exten. No. 2	23,561.32	
Cash	82.30	
W. C. Pidge	.....	1,408.00
J. G. Swinnerton	.....	25.00
Time Checks	.....	20,242.85
H. Bentley	.....	122.00
Upper Location	8,215.92	
Expense	9,466.37	

Dam and Headgates Repairs	28.60	
Canal Repairs	21.40	
Davis Canal	2,306.23	
Woodbridge Yard	167.50	
P. A. Buell & Co	.....	10.47
North Branch Canal (3,173.74)	3,173.74	
Spenker Ditch	2,143.13	
Helen, Chas. M., and Julia H. Weber	30.42	
East Branch Yard	105.29	
H. C. Herren	28.43	
Taxes	8.25	
55		
Team and Buggy Account	338.00	
Harshner Canal (254.15)	254.15	
Stable Expense	2.05	
Team and Buggy Expense	60.40	
Forward	163,534.04	170,270.55

2. Woodbridge Trial Balance.

Brought forward	163,534.04	170,270.55
Accident Account	255.55	
Water Rights Expense	22.50	
Blanks and Stationery	44.50	
Recording	205.00	
Real Estate Expense	67.70	
Advertising Account	400.00	
Right of Way Expense	23.50	
Richard Cope	.....	20.00
Wright and Corsen	.....	7.12
Lodi Sentinel	.....	3.00
A. H. Randall	.....	680.00
E. M. and M. Carr	14.60	
Extra Irrigation	.....	100.25
Cornelius Swain	271.00	
Jno. A. Swain	2,000.20	
H. K. Goodwin	.....	5.15
J. U. Castle	1,600.00	
Stockton Evening Mail	.....	200.00
R. E. Wilhoit & Sons	.....	2.00
Stockton Daily Independent	.....	321.00
J. W. Kerrick	.....	16.65
Mrs. C. Gerard	.....	1.30
56		
S. Newell	62.80	
West Branch Canal	2,800.80	
R. W. Williams	.....	11.00
R. J. & S. A. Parsons	229.34	
Mrs. E. Franklin	.....	280.05

C. W. & P. Yolland	1.75	
H. Beckman	717.70	
Script (Woodbridge Issue)	.....	898.58
T. R. Burkett	.....	37.70
Annual Rentals	.....	2,778.23
L. M. Morse	254.40	
A. M. Harshner	.....	22.80
E. L. Carver	.....	12.00
A. H. Cowell	.....	46.80
Noble & Reid	.....	21.50
Carr Ditch	1,232.80	
Swain Lateral	323.15	
Castle Ditch	737.45	
Weber Ditch	428.37	
Damage Account	560.00	
J. J. Collins	.....	51.47
	175,787.15	175,787.15

(Here follow Exhibits "B," "C" and "D.")

[Endorsed]: Filed December 29, 1894. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

57 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

Order Authorizing and Directing Receiver to Borrow Money.

This cause having come on regularly to be heard in its order on the twenty-first day of January, A. D. 1895, upon the application of Edgar C. Chapman, Esq., receiver heretofore appointed in this cause, for leave to borrow money for the purpose of paying expenses of the care and management of the property which has come into his hands as such receiver and of conducting the business of the same as a going property; and upon due notice given to the plaintiff in said cause and to the defendant and also to the interveners in said cause, the plaintiff having failed to appear upon said hearing and the said interveners having appeared by their respective counsel and the said application having been heard upon the report and petition of said receiver and upon the evidence given in open court, and it appearing to the Court that the said receiver is without funds with which to pay the necessary or any of the necessary expenses
58 incurred or to be incurred by him as such receiver and that there is no present income from the said property, that the same is a going property, that the said receiver has already neces-

sarily incurred expenses and thereby created indebtedness for such expenses in the care and management of said property to the amount of twelve hundred dollars or thereabout and that further expenses of such management and care must be continued from day to day in order to preserve the said property from waste or injury, and it appearing to the Court that it is a proper case therefor, and the defendant in said cause consenting in open court thereto—

It is by the court now here ordered that the said receiver, Edgar C. Chapman, be and he is hereby authorized and empowered as such receiver and for the purposes aforesaid, to wit, for the purpose of paying the expenses and indebtedness already incurred by him in the management of said property and of paying the continuing and accruing expenses of such management, to borrow the sum of five thousand ($5,000.00) dollars to be used by him as such receiver for the purposes aforesaid and to be accounted for to the Court from time to time, and to issue his certificate or certificates therefor payable out of any funds that may come into his hands as such receiver applicable thereto, with interest thereon at such rate as he shall find necessary in order to secure such loan but not to exceed eight per cent. per annum, and that he be and he is hereby authorized to hypothecate or assign any and so many of the notes and mort-
59 gages or other choses in action belonging to the corporate defendant and which have come into his hands as such receiver as may be necessary as collateral security, for the payment of the certificate or certificates so issued by him with the interest thereon, with power to collect the moneys that may become due upon the notes and mortgages or choses in action so assigned and apply the same to the payment of the indebtedness evidenced by said certificate or certificates, the surplus, if any, to be returned to said receiver or the said notes, mortgages or choses in action so assigned as aforesaid to be reassigned to said receiver as such upon the payment of the indebtedness evidenced by the certificate or certificates aforesaid; and that the said receiver report to this Court from time to time his doings under this order together with the amount of money which he may have realized thereunder and his disposition thereof.

Dated this twenty-third day of January, A. D. 1895.

JOSEPH McKENNA, *Judge.*

[Endorsed:] Filed Jan. 23, 1895. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

60 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

Report and Petition of Receiver.

(Filed January 31, 1895.)

Now comes Edgar C. Chapman, receiver in the above-entitled cause, and respectfully reports unto the Court, that he has made diligent effort under the order made by the Court in this cause on the 23d day of January, 1895, to raise the money authorized by said order, or some part thereof, for the purpose of paying the expenses of managing and caring for the property in his hands as such receiver, but has been, and is unable to raise any money whatever on the choses in action and securities in his hands, and is unable to raise any money upon any of the personal assets in his hands as such receiver; that upon investigation he finds that all of the notes in his hands purport to be secured by mortgage on real estate, but that in each and every case except three, the mortgages given to secure said notes are second or third mortgages upon the property described therein, and that the encumbrances prior to the
61 mortgages so held by the receiver are so great that he is unable to negotiate or hypothecate the security, or any part thereof; that as to the three notes which are secured by first lien upon real estate, they are all made in the year 1894, for small sums, and run for ten years, with interest at six per cent. per annum, and that he is unable to raise any money whatever upon said notes. Said receiver further reports that he is now actually indebted in the sum of about seventeen hundred ($1,700.00) dollars, for work and labor necessarily employed in the care of said property; that all his employees threaten to leave unless promptly paid; that there are about twenty thousand ($20,000.00) dollars of outstanding time certificates given by the defendant corporation for work, labor and material furnished prior to the appointment of this receiver, and that the standing and credit of said defendant is such that men refuse to work, even for this receiver, without prompt payment of their wages, by reason whereof this receiver will be entirely unable to manage and care for the said property, to protect it from damage and loss, or to preserve defendant's title to water rights, unless he can be immediately placed in funds necessary to pay the expenses thereof; that in addition to the amount of indebtedness aforesaid, he has been compelled to, and he and his counsel have made advances for personal expenses, court fees and on account of work and labor aforesaid considerably in excess of all moneys received by him as such receiver; that since the date of his last report, no money has

62 come into his hands as such receiver; that there is nothing outstanding upon which he can make collections; that everything that was available upon which money could be readily realized, had been hypothecated before this receiver was appointed, and that he knows of no source of income from which money can be derived earlier than the month of June or July next.

Wherefore, this receiver again applies to the Court, and prays the Court to grant an order authorizing him to borrow, for the purpose of paying the expenses of caring for and managing the property now in his hands as such receiver, and as necessary expenses as such receiver, such sum of money as to the Court shall seem just, not less than the sum of five thousand ($5,000.00) dollars, and to issue therefor receiver's certificates, which shall be and constitute a first lien upon and preferred claim against the mortgaged property described in the complaint in this cause, to be paid out of the proceeds of any sale made in this cause, or out of any other funds that shall come into the hands of this receiver applicable thereto.

And this receiver will ever pray, etc.

Dated this 30th day of January, 1895.

E. C. CHAPMAN, *Receiver.*

FOX, KELLOGG & GRAY,
Attorneys for Receiver.

63 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Edgar C. Chapman, being duly sworn, deposes and says: That he is the receiver who makes the foregoing report and petition; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated on his information or belief, and as to those matters he believes the same to be true.

EDGAR C. CHAPMAN.

Subscribed and sworn to before me this 30th day of January, A. D. 1895.

[SEAL.] THOS. E. HAVEN,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed:] Filed Jan. 31, 1895. W. J. Costigan, Clerk. By W. B. Beaizley, Dep. Clerk.

64 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

Order Authorizing Receiver to Borrow Money and Issue Receiver's Certificates.

This cause having come on regularly to be heard in its order on the 6th day of February, A. D. 1895, upon the application of Edgar C. Chapman, Esq., receiver heretofore appointed in this cause, for leave to borrow money for the purpose of paying expenses of the care and management of the property which has come into his hands as such receiver and of conducting the business of the same as a going property; and upon due notice given to plaintiff in said cause, and to the defendant, and also to the interveners in said cause, the plaintiff appearing by Page & Eells their attorneys, the defendant appearing by Daniel Titus, its attorney, and the said interveners having appeared by W. M. Cannon, their counsel, and the hearing of said application having been continued from time to time, until this date and the said application having been heard upon the report and petition of said receiver, and upon the evi-
65 dence given in open court, and it appearing to the Court that the said receiver is without funds with which to pay the necessary or any of the necessary expenses incurred or to be incurred by him as such receiver, and that there is no present income from the said property, and that said receiver has been and is unable to raise any money under the order entered in this cause on the 23d day of January, 1895, and that the same is a going property; that the said receiver has already necessarily incurred expenses and thereby created indebtedness for such expenses in the care and management of said property to the amount of about seventeen hundred dollars, and that further expenses of such management and care must be continued from day to day in order to preserve the said property from waste or injury, and it appearing to the court that it is a proper case therefor; and the plaintiff in said cause consenting in open court thereto, the defendant not objecting thereto—

It is by the Court now here ordered, that the said receiver Edgar C. Chapman, be and he is hereby authorized and empowered as such receiver and for the purposes aforesaid, to wit, for the purpose of paying the expenses and indebtedness already incurred by him in the management of said property, and of paying the continuing and accruing expenses of such management, to borrow the sum of five thousand ($5000.00) dollars to be used by him as such receiver for the purposes aforesaid, and to be accounted for to the Court
66 from time to time, and to issue his certificate or certificates therefor, payable out of any funds that may come into his

hands as such receiver applicable thereto, with interest thereon at such rate as he shall find necessary in order to secure such loan, but not to exceed ten per cent. per annum, and that the certificates so issued shall be and constitute a first and prior lien upon all the property described in the mortgage for the foreclosure of which this action is brought, and if not paid prior thereto, then to be paid out of the proceeds of any sale of said property next after the costs of suit and sale, and before the payment of any other sum on account of said mortgage, or the indebtedness secured thereby; and that the said receiver report to this Court from time to time his doing under this order, together with the amount of money which he may have realized thereunder, and his disposition thereof.

Dated this 15th day of February, A. D. 1895.

JOSEPH McKENNA, *Judge.*

[Endorsed:] Filed February 15th, 1895. W. J. Costigan, Clerk.

67 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

Notice of Motion for Order of Sale.

Take notice that on Monday, the 24th day of August, 1896, at eleven o'clock A. M. or as soon thereafter as counsel can be heard, at the courtroom of the above-entitled court in the city and county of San Francisco, State of California, the receiver heretofore appointed by the Court in the above-entitled cause, by his counsel, will move the Court for an order authorizing and directing the said receiver to sell at public auction, upon notice thereof duly given, to the highest and best bidder therefor for gold coin of the United States, the dams, canals, ditches, water rights, real property, irrigation works and plant belonging to defendant and covered by the mortgage of plaintiff and now in the possession of said receiver, and out of the proceeds thereof to pay off the unpaid balance of

68 expenses incurred by said receiver in the care and management of the property, together with his compensation and counsel fees to be fixed by the Court, paying the balance of the proceeds of such sale into court to abide the final determination of the Court in this cause and such disposition thereof as the Court shall direct; or for such other order or relief as the Court may direct.

Said motion will be made on the report of said receiver bearing date this day, and a copy of which is herewith served upon you, and on the ground that the same is perishable property, constantly suffering and depreciating in value for want of funds for the proper man-

agement and care thereof, and that in the present condition of the property sufficient funds for such management and care cannot be realized from the income of the property.

Dated this 13th day of August, 1896.

FOX, KELLOGG & GRAY,
Attorneys for Receiver.

To Messrs. Page, Eells & Wheeler, Attorneys for Plaintiff; D. Titus, Esq., Attorney for Defendant; W. M. Cannon, Esq., Attorney for certain interveners; Edward P. Cole, Esq., Attorney for Petitioner, William C. Pidge.

69 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

Report of Receiver.

(Filed August 14, 1896.)

To the Honorable, the Justices of the Circuit Court of the United States, of the Ninth Judicial Circuit, Northern District of California:

Now comes E. C. Chapman, receiver appointed by the Court in the above-entitled cause and makes and files this, a partial report of his proceedings as such receiver, for the information of the Court; a more complete, detailed and itemized report of receipts and disbursements will accompany his final report to be made whenever thereunto required.

As shown by my report filed in this cause on the 29th day of December, 1894, I entered upon the discharge of my duties as such receiver immediately upon receiving my appointment and
70 was put in possession of property and assets on the same day.

A detailed statement of the property of which I was so placed in possession accompanies my said report filed December 29th, 1894. Up to that time I had received in cash the total sum of $875.73 and disbursed $903.66, leaving a balance due me on account of disbursements of $27.93 as shown by the statement of account then made. As shown by subsequent reports made to this Court, nearly, if not quite all the bills receivable which came into my hands or of which account was furnished to me with the securities therefor, had been pledged or assigned by the corporation prior to my appointment and I have been able to realize but very little, if any, money on account thereof; nearly all the money which I have since received, has been

realized from water rents for water supplied and the amount has been wholly disproportionate to the expenses necessarily incurred.

At the time I entered upon my duties, I found the large wooden dam of the company located at Woodbridge in a defective condition and was advised by competent engineers that the west abutment thereof needed immediate repairs and accordingly proceeded to make such repairs as advised by such engineers and continued to supply water to the farmers who had secured from the company water rights, until the 23d day of July, 1895, when, without any warning or any means of prevention, the river undermined the easterly portion of the dam and carried away the east abutment thereof. This caused the river to change its channel and flow over the ground formerly occupied by such abutment. The quantity of earth
71 carried away by this change in the course of the stream amounted to some 10,000 cubic yards, which formerly constituted the easterly bank thereof. Nor was this all the damage done. The sheet piling in front of the dam for a distance of 120 feet was completely washed out and many of the heavy timbers supporting the large wooden front apron were displaced.

Prior to that time I had been authorized by the Court to raise money on receiver's certificates to the extent of $5,000, but had been entirely unable to do so without personally guaranteeing the payment of the same. Upon the washing away of this dam, I notified the farmers, patrons of the company, and interceded with them for assisstance in restoring the dam. After considerable communication and some delay ten of them agreed to contribute the sum of $1,500 for the restoration of the dam. I had previously purchased on credit all the lumber, hardware and materials necessary to complete the dam and having obtained this subscription from the farmers I commenced work, and after having carried on the work for two months, most of the farmers failed to pay in their subscriptions. When it became known that the payment of the subscription would not be forthcoming, nearly all of my employees, numbering some thirty, at that time, quit work and two of them undertook to attach all the personal property of the company, including wheelbarrows, shovels, lumber, ropes, tools, implements and appliances necessary for such work. The attaching officer, who had possession of such property, refused to release the same until an order was
72 secured from this Court and served upon him to show cause why he should not be punished for contempt, when he released said property from the attachment. Thereafter, and on or about the 1st of November, after much deliberation and debate, the principal patrons of the company met and agreed to furnish money necessary for the repairs on the dam upon the condition that I should give them receiver's receipts for the money so furnished and that a competent engineer, whom they would name, should be appointed to supervise the work. To this I consented. The engineer who was unanimously selected by the farmers was W. C. Pidge, Esq., a former engineer of the Woodbridge company. Under his direction, and with an additional expense of some $5,000, the dam was finally repaired before the commencement of the winter rains of 1895 and so remained until the 26th day of July, 1896. On

this last-named day the dam was again undermined at the same place where the river broke through the preceding year. It was thought by the engineer in charge, upon the completion of the repairs, that it would be impossible for the river to undermine the dam again, as he claimed that the sheet piling was driven far down into a bed of blue clay which was supposed to form the bed of the river. But the fact that the river undermined the same is proof that his opinion was not correct. The foundation of the dam and the superstructure thereof still stand intact but the sheet piling, by which the water is prevented from flowing through or under the dam, is not sufficient to hold the waters of the river. I am informed by civil engineers that there is a well defined bed of clay in
73 the bed of the river at the place where the dam was constructed, but from my experience with this work of repair and the result thereof, I am led to believe that it is not as good as it should be for such a dam as was constructed, and that hereafter it will be wise to make repairs on the theory that there is no bed of blue clay under the river.

The operating expenses of the ditch thus far amount to about $8,000 and the expenses of repairing the dam, necessary expenses of repairing ditches and canals after the winter rains, cost of repairing bridges, syphons, checks, flumes, supply gates, waste gates, main headgates, drain boxes, culverts and canals, including necessary tools, implements and appliances thereto, so as to keep the property intact and preserve the rights thereto and supply water to those who had already acquired water rights prior to my appointment, amount to about the sum of $12,000, making the aggregate of expenses which have thus far been incurred about $20,000, exclusive of my own traveling expenses and exclusive of any compensation to myself or to my counsel for services or court expenses.

For these expenses so incurred, less the sum of about $1,500, which I have collected from the patrons of the works and used in paying taxes and wages of the employees, leaving a balance of about $18,500, I have issued receiver's certificates to the amount of $5,000 given for the moneys advanced for the repair of the dam as aforesaid, the remaining $13,500 being paid by time checks issued to employees for labor and by cash raised upon my own personal
74 credit and advanced for the purposes aforesaid.

By reason of this last washing away of the dam, farmers, holding water rights for about three thousand acres of land, have been cut off from the use of water at a time when it occasioned a loss of about one-third of their income from their lands for the current year, and unless the dam can be restored before the winter rains, will deprive them of water for the ensuing year; the value of the works and property will be very greatly depreciated and much loss will necessarily occur to all parties interested. I am unable to raise further funds on receiver's certificates. The farmers are not inclined to make further contributions, and the property, if offered for sale, would not, in my judgment, in its present condition, bring anything near its worth, and yet the longer it remains in its present condition, the more it is likely to depreciate. The water of the river has not gone down sufficient as yet to enable us to determine the extent and nature of the repairs necessary to restore the

structure and preserve the efficiency of the works, but in my judgment it will require from $2,000 to $5,000 to accomplish the same.

The care and management of the property during the period of my incumbency has been very much less expensive than it was prior to my appointment, but while the property remains in litigation no advance steps can be made in the way of extending its operations and securing additional income for the use of water, and in my judgment the time has come when, in order to preserve the property,
75 some steps must be taken by the parties interested in the property for supplying funds for its protection, care and repair, or some order of the Court should be made for the final disposition thereof.

E. C. CHAPMAN, *Receiver.*

FOX, KELLOGG & GRAY,
Att'ys for Receiver.

Aug. 13, 1896.

[Endorsed:] Received copy hereof August 13th, 1896. E. P. Cole, per H. K., Daniel Titus, J. J. Scrivner, Geo. W. Schell, Att'ys for Pl'tff. Filed August 14th, 1896. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

76 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

Order Authorizing Receiver's Certificates to Issue.

(Filed November 19, 1896.)

A report having been heretofore made on the 13th day of August, 1896, by E. C. Chapman, receiver in the above entitled cause and duly filed therein, whereon an order was issued by the Court to show cause why the property of the defendant in the above-entitled cause, now in the hands of said receiver, should not be sold and the proceeds thereof applied in satisfaction of the costs and expenses incurred by said receiver in the care and management of said property and the balance thereof be paid into court to abide the final judgment of the Court in said cause and its final order for the distribution thereof, or for such other or different order as to the Court shall seem just and proper in the premises; and the hearing upon said order having been continued from time to time at the request
77 of plaintiff; and it appearing from the report so made that receiver's certificates have been heretofore issued in said cause under and by virtue of an order of this Court authorizing the same to the extent named in said order, to wit, to the amount of five thousand ($5,000) dollars, and that other and further funds are

necessary for the payment of expenses necessarily incurred in the management and care of said property and of taxes thereon, and the said plaintiff now consenting thereto—

It is by the Court now here ordered that the said E. C. Chapman, receiver, be and he is hereby authorized to make and issue receiver's certificates to the further amount of twenty-five hundred ($2,500) dollars to run for such period of time as he shall deem necessary and to bear interest at such rate as he shall find necessary in order to raise moneys thereon, not to exceed ten per cent. per annum; such receiver's certificates, together with those already heretofore issued as aforesaid to constitute a first lien on the property of said defendant held by said receiver, payable out of the first moneys received from the sale of said property, and the same or the proceeds thereof to be used by said receiver for the payment of taxes upon said property and of the current and necessary expenses for the management and care thereof.

Dated this 19th day of November, 1896.

JOSEPH McKENNA, *Judge*.

[Endorsed:] Filed November 19th, 1896. W. J. Costigan, Clerk.

78 In the United States Circuit Court, Ninth Judicial Circuit, Northern District of California. In Equity.

THE ATLANTIC TRUST COMPANY (a Corporation), as Trustee of the Trusts Created by the Mortgage in this Complaint Described, Complainant,

vs.

THE WOODBRIDGE CANAL AND IRRIGATION COMPANY (a Corporation), Respondent.

Amended Bill of Complaint.

To the Justices of the Circuit Court of the United States, for the Northern District of California:

The Atlantic Trust Company, of the city of New York and citizen of the State of New York, brings this its amended bill against the Woodbridge Canal and Irrigation Company, of San Francisco and a citizen of the State of California, and thereupon your orator complains and says:

I.

That at all the times in this complaint mentioned the plaintiff The Atlantic Trust Company was and now is a corporation, organized and existing under and by virtue of the laws of the State of New
79 York, having its principal place of business in the city and county of New York, in said State, and being formed and incorporated for the purpose and with the express powers of accepting, holding and managing trusts and trust properties.

That at all of said times, The Woodbridge Canal and Irrigation Company was and now is a corporation, duly organized and existing

under and by virtue of the laws of the State of California, having its principal place of business in the city and county of San Francisco, in said State and was formed for the purpose and with the powers of owning and operating an irrigating canal in the county of San Joaquin, in said State of California.

That said defendant is a citizen and resident of the Northern Judicial District of said State of California, and that this plaintiff is a citizen and resident of the Southern Judicial District of the State of New York.

II.

That heretofore, to wit, on or about the 17th day of July, 1891, at said city and county of San Francisco, the said Woodbridge Canal and Irrigation Company made and executed one hundred (100) bonds, numbered from one (1) to one hundred (100), both numbers inclusive, each of which said bonds was in the words and figures following, to wit:

80 "UNITED STATES OF AMERICA, *State of California.*

No. ——. $1000.

First Mortgage Convertible Gold Bond of the Woodbridge Canal and Irrigation Company.

The Woodbridge Canal and Irrigation Company, a corporation duly organized under the laws of the State of California, acknowledges itself indebted to the bearer, or to the registered owner thereof, in the sum of one thousand dollars, which it promises to pay in the gold coin of the United States of America, of the present weight and fineness, on the first day of September, in the year nineteen hundred and one, at the office of the Atlantic Trust Company, in the City of New York, with interest thereon, at the rate of six per centum per annum, payable semi-annually, at the same place, upon presentation and surrender of the coupons hereto annexed, on the first day of March and September in each year, as they respectively become payable, so long as the principal remains unpaid.

This bond is one of a series of one hundred bonds, of similar amount, tenor and date, which are secured by a mortgage or deed of trust, bearing date this day, executed and delivered by the Woodbridge Canal and Irrigation Company to the Atlantic Trust Company, as Trustee, conveying and assigning to the said Trustee all its corporate property and franchises now owned or hereafter acquired.

81 Any lawful holder of this bond, upon presenting the same at the office of the said Trustee, with all unmatured coupons attached thereto, may have the same registered in his own name, or that of any other person, in a book to be kept for that purpose, and such name, with the date of registry, shall be endorsed upon the bond by the said Trustee. From the date of such registry until, by a like endorsement, it be again made payable to bearer, such bond

shall be transferable only by a written transfer thereof on the books of the Trustee, such transfer, and the date thereof, to be in like manner endorsed upon the bond, and while so registered, all payments becoming due thereon, either for principal or interest, shall be paid only to such registered owner or to his order. Successive registration and transfers to bearer may be made at the option of any lawful holder and owner of this bond.

It is expressly agreed that in case default shall be made in the payment of any semi-annual installment of interest on the day whereon the same shall fall due, as herein provided, or in the performance of certain covenants contained in said mortgage or deed of trust, and should default in any of such cases continue for the space of six months, then, and in either of such cases, the principal sum herein mentioned may, as in said mortgage or deed of trust provided, immediately become due and payable, anything herein contained to the contrary notwithstanding.

At any time between the first day of July, 1894, and the first day of January, 1895, this bond, upon presentation and
82 surrender thereof, to the said Trustee, with all unmatured coupons attached, may, at the holder's option, be converted into the capital stock of this Company at par, and the holder in such case shall be entitled to receive in payment of this bond one thousand shares of said capital stock of one dollar each, said stock being reserved in the treasury of the Company for that purpose.

This bond is also entitled to the benefits of the Sinking Fund in said mortgage or deed of trust provided for. The holder of this bond, by acceptance thereof, hereby waives any personal claim or demand against the stock-holders of said Company, for the indebtedness incurred hereby.

This bond shall not become valid or obligatory until the certificate endorsed hereon shall have been duly signed by or in behalf of the said Atlantic Trust Company as Trustee.

In witness whereof, the Woodbridge Canal and Irrigation Company has caused these presents to be sealed with its corporate seal, and to be signed by its President and attested by its Secretary, and the annexed coupons to be executed with the engraved signature of its Secretary, this — day of ——, one thousand eight hundred and ninety-one.

—— ——, *President.*

Attest:

—— ——, *Secretary.*"

That each of said one hundred bonds was in the words and figures above set forth, except that each was severally numbered
83 as aforesaid, and that to each of said bonds were attached twenty (20) interest coupons, likewise executed by the Woodbridge Canal and Irrigation Company, each of which coupons was in the words and figures following, to wit:

"30.

"On the first day of ——, 18—, the Woodbridge Canal and Irrigation Company will pay, at the office of the Atlantic Trust Company, in the City of New York, upon presentation and surrender of this coupon, to the bearer, or to the registered owner thereof, thirty dollars in United States gold coin for six months' interest then due on Bond No. —.

—— ——, *Secretary.*"

That the blanks in said twenty (20) coupons attached to each bond were so filled out as to bear the number of the bond to which they were attached and to fix the date of payment of each coupon so that they should consecutively fall due, one on the first day of September and one on the first day of March of each year, beginning March 1st, 1891, and ending September 1st, 1901.

That each of said bonds when so executed, as aforesaid, bore endorsed thereon the following certificate, signed by the complainant:

"The Atlantic Trust Company hereby certifies that the within bond is one of the bonds issued under and in pursuance of a certain mortgage or deed of trust, dated ——, and duly executed
84 and delivered to said Company, as Trustee, by the Woodbridge Canal and Irrigation Company.

THE ATLANTIC TRUST COMPANY,
By W. H. MALE, *President.*"

That sixty-six (66) of said one hundred (100) bonds, with said relative coupons attached thereto, when so executed were by the said Woodbridge Canal and Irrigation Company, duly issued, sold and delivered to purchasers thereof prior to September 1st, 1891, for money actually paid to it for the same.

That no more or none other of the said one hundred (100) bonds than the said sixty-six (66) have ever been sold by the said Woodbridge Canal and Irrigation Company, and that said Company is still the owner of the remaining thirty-four of said bonds.

III.

That on or about the 17th day of July, 1891, and in order to secure the payment of the said sixty-six (66) bonds so sold and delivered, the said Woodbridge Canal and Irrigation Company executed and delivered to this plaintiff as Trustee of the trusts thereby created, its certain indenture of mortgage, dated July 17, 1891, and executed in its corporate name by M. V. B. Watson, as its president, and by M. T. Moses, as its secretary, and to which mortgage was affixed its corporate seal.

That said mortgage was further, on or about the day on which it bears date, signed and executed by this plaintiff in accept-
85 ance of the trusts thereby created and imposed upon this plaintiff.

That said mortgage was duly acknowledged, so as to entitle it to be recorded, and it was recorded on the 10th day of August, 1891,

in book "A" of Deeds, volume 74, page 361, in the county recorder's office of the county of San Joaquin, State of California.

That a copy of said mortgage is hereto attached, marked Exhibit "A," and is here referred to and made part of this complaint.

That in and by said mortgage the said Woodbridge Canal and Irrigation Company did mortgage to this complainant, as Trustee, to secure the payment of the aforesaid bonds, the entire corporation property of said Woodbridge Canal and Irrigation Company, and all its lands, tenements, hereditaments, privileges, franchises, rights of way, flowage and riparian rights, easements and fixtures, then owned or thereafter to be acquired by it, and all its canals, flumes, headworks, gates, dams, and bridges, then constructed or to be thereafter constructed, extending from the point of division in the Mokelumne river, in the town of Woodbridge, in San Joaquin County aforesaid, in a westerly direction to Taison and New Hope, in said county, and in an easterly and southerly direction to the Calaveras river, with all other or branch canals that might be thereafter constructed within said territory south and west of the Mokelumne river; and all the estate, right, title and interest, claims and demands, rights of way and other easements, whether at law or in equity, of the said
86 Canal Company, of, in and to the same; and also all buildings, fixtures and personal property thereon or belonging to said canal company; and all receipts, incomes and profits which said company shall derive on account of any contract or agreement for the transfer of water rights as appurtenant to specified lands, excepting the annual rentals for the use of said water and interest endorsed on such contracts or agreements.

IV.

That on said 17th day of July, 1891, and at the time of the execution of the said bonds and the said mortgage M. V. B. Watson was the president and M. T. Moses was the secretary of the said Woodbridge Canal and Irrigation Company, and as such president and secretary they were duly and fully authorized and empowered to execute the said bonds and mortgage, in the name and as the act of the said Woodbridge Canal and Irrigation Company, and to attach to said bonds and mortgage its corporate name and to affix thereto its corporate seal, by resolution adopted by the vote of the holders of more than two-thirds of its capital stock at a meeting of its stockholders, duly and regularly called, notified, organized and held at the office of the Woodbridge Canal and Irrigation Company in the city and county of San Francisco, State of California, on the 11th day of July, 1891; and said president and secretary were further authorized to so execute said bonds and mortgage by resolution of the board of directors of the said Woodbridge Canal and Irrigation Company, duly passed and adopted.

87 V.

That since the execution of said mortgage the Woodbridge Canal and Irrigation Company has constructed and now owns an irrigating

canal in the county of San Joaquin, State of California beginning at a dam in the Mokelumne river, in the town of Woodbridge, in the southeast quarter (¼) of section thirty-four (34), in township four (4) north of range six (6) east, Mount Diablo base and meridian, and running thence through said section thirty-four (34) and through and across portions of sections three (3), ten (10), eleven (11), fourteen (14), twenty-three (23), twenty-six (26), thirty-five (35), and thirty-six (36), in township three (3), north of range six (6) east, and through and across portions of sections one (1), twelve (12), and thirteen (13), in township two (2) north of range six (6) east; and also through and across section eighteen (18), in township two (2) north of range seven (7) east, and following the line of division between subdivisions fifty-one (51) and sixty-one (61) of El Rancho Del Campo De Los Franceses.

That the said Woodbridge Canal and Irrigation Company has likewise constructed and now owns and is operating sundry branch or lateral canals, diverting from said main canal above referred to, in a general westerly direction and irrigating the lands along their course.

That the Woodbridge Canal and Irrigation Company, since the execution of said mortgage, has likewise acquired and now owns various other lands and properties, contracts and mortgages in said county of San Joaquin and in the Northern District of the
88 State of California, a list of which properties is hereto appended, marked Exhibit "B," and is here referred to and made part of this complaint.

VI.

That no part of the principal sum mentioned in any of said sixty-six (66) bonds has ever been paid, and no part of the interest upon said bonds, which, by the terms thereof and of the coupons attached thereto, became due and payable on the first day of September, 1894, has ever been paid, nor has any money for the purpose of paying said September interest ever been paid or tendered to this complainant.

That on or about the first day of September, 1894, the holders of fifty-five (55) of said bonds, which had been so sold as aforesaid, by the Woodbridge Canal and Irrigation Company, did present, at the office of this complainant, in the city of New York the fifty-five (55) several coupons attached to said bonds and then, on said day, falling due as aforesaid according to their terms, and did demand from this complainant payment thereof; that none of said coupons, nor any part of the money due thereon, was then paid by this complainant, or by any one; nor has any part of said money due on said coupons ever been paid by this complainant, or by any one; and complainant avers that thereby, on said first day of September, 1894, default was made by the said Woodbridge Canal and Irrigation Company in the payment of the said installment of interest upon said bonds.

That at a special meeting of the board of directors of the
89 Woodbridge Canal and Irrigation Company, held at its office in the city and county of San Francisco on the first day of

October, 1894, a resolution was unanimously adopted, declaring that said Woodbridge Canal and Irrigation Company was then unable, and would continue to be unable to pay at any time within the ensuing six months, that is to say, prior to April 1st, 1895, any of this indebtedness or any of the interest upon the said bonds; and further providing that it waived all conditions and provisions specified or provided in Article Fifth of the said mortgage, Exhibit "A" hereof, as conditions precedent to the enforcement of the lien created by said mortgage; and in and by said resolution this complainant was authorized and requested to immediately commence this action for the foreclosure of the said mortgage, and to enforce the payment of the principal and interest of the said bonds.

That on the 2d day of October, 1894, and prior to the commencement of this action, the owners and holders of fifty-five (55) of the said sixty-six (66) bonds then outstanding did request, in writing, this complainant to commence this action, and did, in writing, express their election and option that the whole principal sum mentioned in each and all of the mortgage bonds then outstanding shall forthwith become due and payable.

VII.

That the said canal is in the receipt of an income from the sale and rentals of water and must be operated as a whole, and kept in repair and under one management, or it will be entirely lost, and all water rights and franchises possessed by the said canal company will be forfeited from non-user, and said franchises will be forfeited and annulled and the value of said canals destroyed in case the diversion and distribution of water thereby is suspended or discontinued.

That, therefore, the appointment of a receiver of said property, with power to control and manage the said canals and all of them, is necessary for the protection of said bondholders, by this Court in this proceeding.

VIII.

Your orator further says, that it has been compelled to employ counsel to prosecute this proceeding to foreclose the said mortgage, and that it has employed John B. Hall, Esq., of Stockton, California, and J. J. Scrivner, Esq., and Geo. W. Schell, Esq., of San Francisco, in said State, as its solicitors, attorneys and counselors in this cause to prosecute the same, and that ten thousand ($10,000) dollars would, as your orator believes, be a reasonable counsel fee for said solicitors as their compensation for their services on behalf of your orator.

IX.

And your orator further avers that, it verily believes that it would be for the interest of the said Woodbridge Canal and Irrigation Company, and of the purchasers and owners of said sixty-six (66) bonds, that they be permitted to become purchasers of the property described in said trust deed, and that they be permitted to pay the amount of any bid that they might make in the bonds held by them *pro tanto*.

91 Wherefore, your orator prays:

1. That this Honorable Court, upon the filing of this complaint, appoint some suitable person a receiver in this action, to take charge of the said mortgaged property and to maintain and operate said canals, pending this action and until final sale under any judgment of foreclosure herein, under the directions of this Court, and with such powers and authority as this Court, by its order, may from time to time confer upon him.

2. That it be determined by the decree of this Honorable Court that said sixty-six (66) bonds hereinbefore mentioned, were legally and lawfully issued and sold, and that the same are now outstanding and unpaid, and that said Court declare and adjudge that the entire principal sum of said sixty-six (66) bonds so issued and sold, is unpaid, due and payable; and that said Court further, by its said decree, fix and determine the amount of money due for principal and interest upon said bonds and enter judgment therefor against the said Woodbridge Canal and Irrigation Company in favor of your orator, as trustee for said holders of said sixty-six (66) bonds, and that this Court further by its decree, ascertain, fix and determine a reasonable and suitable attorney's fee for payment of the services of your orator's attorneys in this action; and further fix and determine the amount to be paid your orator as compensation for its services as such trustee, and that your orator have judgment against the said Woodbridge Canal and Irrigation Company for the amount found due for principal and interest upon said sixty-six (66)

92 bonds—for said attorney's fee, and the amount due your orator for its services as trustee herein, and costs and expenses of this action.

3. That further by said decree, this Court shall order all of said franchises, canals, lands, and other mortgaged premises and property, to be sold by the marshal of the said Northern Judicial District of the State of California, at public auction, in accordance with law and with the course and practice of this Honorable Court; that the proceeds of said sale may be applied in the payment of the expenses of sale and of the costs in this action; and of said trustee's commissions, and counsel fees, and in the payment of the amount found due by this Honorable Court upon said outstanding bonds to the persons holding the same; that said defendant, and all persons claiming, or to claim by, through or under it, subsequent to the execution of said mortgage, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all right, title, claim or equity of redemption, in the said mortgaged property and premises, and every part thereof. That the complainant, or any other party to this suit, or any bondholder, may become a purchaser at such sale; that the marshal execute deeds to the purchaser or purchasers, and that said purchasers be let into the possession of the property bought by them, on production of such deed; and that it be further adjudged and decreed that any of said bondholders may be purchasers of said property or any portion thereof, and that they may be permitted to pay for the property so purchased by them in

93 the bonds held by such purchasers *pro tanto*, and that such other and further relief may be by decree given in the premises as to this Court shall seem meet and agreeable to equity.

And may it please your Honor to grant unto this complainant a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said respondent, the Woodbridge Canal and Irrigation Company, therein commanding it on a day certain to be named and under a certain penalty, to be and appear before this Honorable Court, then and there to answer (but not under oath) all and singular the premises, and to stand to, perform and abide by the said order, direction and decree, as may be made against it in the premises, as shall seem meet and agreeable to equity and good conscience.

And the complainant, as in duty bound, will ever pray, etc.

JOHN B. HALL AND
SCRIVNER & SCHELL,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco, ss:

J. J. Scrivner, being duly sworn, deposes and says: That he is one of the solicitors for the complainant, the Atlantic Trust Company, in said action, and makes this affidavit on its behalf; that said complainant has no officer or other agent in the State of Cali-
94 fornia; that he has read the foregoing amended bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters that he believes it to be true.

J. J. SCRIVNER.

Subscribed and sworn to before me, this 14th day of December, 1895.

[SEAL.] E. M. MORGAN,
Notary Public.

EXHIBIT "A."

This indenture, made the — day of July, one thousand eight hundred and ninety-one, between the Woodbridge Canal and Irrigation Company, a corporation duly created and organized under the laws of the State of California, and having its principal place of business in the City and County of San Francisco, in said State, and the location of its works in the County of San Joaquin in said State (hereinafter called "the Company"), party of the first part, and the Atlantic Trust Company, a corporation duly organized and existing under the laws of the State of New York, and doing business in the City of New York, as Trustee (hereinafter called "the Trustee"), party of the second part, witnesseth:

That whereas, the said Company is now the lawful owner of a certain irrigating canal, flume and headworks in the county of San Joaquin aforesaid, and of various lands, tenements, hereditaments,

privileges, franchises, rights of way, water rights and other
95 easements, contracts, fixtures and property thereunto appertaining, and hereinafter more particularly described, conveyed and assigned:

And whereas, the Company is desirous of fully completing and equipping the said canal and headworks of the Mokelumne River, in accordance with the plan of its Chief Engineer, so as to enable said Company to furnish water for the thorough and complete irrigation of about one hundred thousand acres of farming land, lying south and west of the said river, in said San Joaquin County;

And whereas, for the purpose of securing money for the objects aforesaid, and for the maintenance and operation of the said canal, and for the payment of said Company's existing indebtedness and the general transaction of its business, the said Company desires to borrow the sum of one hundred thousand dollars;

And whereas, at a special meeting of the stockholders of said Company, duly called and held for that purpose on the 11th day of July, 1891, at the office of the Company, in the City of San Francisco, and State of California, it was duly resolved, by a vote of more than two-thirds in interest of said stockholders that the said Company be authorized to borrow said sum and to issue its bonds as hereinafter described, for said amount, and to execute its mortgage, or deed of trust, to secure the same, as may more fully appear by a reference to the said resolution entered upon the minutes of the Company.

96 And whereas, the said Company, to that end, is about to execute and to place in the hands of the said Trustee, to be issued, certified and delivered, as shall be directed by resolution of the Board of Directors of said Company, its one hundred corporate bonds of one thousand dollars each, numbered consecutively from one to one hundred, both inclusive, with semi-annual coupons or interest warrants attached, and with certificates to be signed by the said Trustee, all of which bonds, coupons and certificates are in the following form, that is to say.

(*Form of Bonds.*)

"UNITED STATES OF AMERICA, *State of California.*

No. ——. $1000.

First Mortgage Convertible Gold Bond of the Woodbridge Canal and Irrigation Company.

The Woodbridge Canal and Irrigation Company, a corporation, duly organized under the laws of the State of California, acknowledges itself indebted to the bearer, or to the registered owner thereof, in the sum of one thousand dollars, which it promises to pay in the gold coin of the United States of America, of the present weight and fineness, on the first day of September, in the year nineteen hundred

and one, at the office of the Atlantic Trust Company, in the City of New York, with interest thereon, at the rate of six per centum
97 per annum, payable semi-annually, at the same place, upon presentation and surrender of the coupons hereto annexed, on the first day of March and September in each year, as they respectively become payable, so long as the principal remains unpaid.

This bond is one of a series of one hundred bonds, of similar amount, tenor and date, which are secured by a mortgage or deed of trust, bearing date this day, executed and delivered by the Woodbridge Canal and Irrigation Company to the Atlantic Trust Company, as Trustee, conveying and assigning to the said Trustee all its corporate property and franchises now owned or hereafter required.

Any lawful holder of this bond, upon presenting the same at the office of the said Trustee, with all unmatured coupons attached thereto, may have the same registered in his own name, or that of any other person, in a book to be kept for that purpose, and such name, with the date of registry, shall be endorsed upon the bond by the said Trustee. From the date of such registry until, by a like endorsement, it be again made payable to bearer, such bond shall be transferable only by a written transfer on the books of the Trustee, such transfer, and the date thereof, to be in like manner endorsed upon the bond, and while so registered, all payments becoming due thereon, either for principal or interest, shall be paid only to such registered owner or to his order. Successive registration and transfers to bearer may be made at the option of any lawful holder and owner of this bond.

98 It is expressly agreed that in case default shall be made in the payment of any semi-annual installment of interest on the day whereon the same shall fall due, as herein provided, or in the performance of certain covenants contained in said mortgage or deed of trust, and should default in any of such cases continue for the space of six months, then, and in either, of such cases, the principal sum herein mentioned may, as in said mortgage or deed of trust provided, immediately become due and payable, anything herein contained to the contrary notwithstanding.

At any time between the first day of July, 1894, and the first day of January, 1895, this bond, upon presentation and surrender thereof, to the said company, with all unmatured coupons attached, may, at the holder's option, be converted into the capital stock of this company at par, and the holder in such case shall be entitled to receive in payment of this bond one thousand shares of said capital stock of one dollar each, said stock being reserved in the treasury of the company for that purpose.

This bond is also entitled to the benefits of the Sinking Fund in said mortgage or deed of trust provided for. The holder of this bond, by acceptance thereof, hereby waives any personal claim or demand against the stockholders of said Company, for the indebtedness incurred hereby.

This bond shall not become valid or obligatory until the certifi-

cate endorsed hereon shall have been duly signed by or in
99 behalf of said Atlantic Trust Company as Trustee.

In witness whereof, the Woodbridge Canal and Irrigation Company has caused these presents to be sealed, with its corporate seal, and to be signed by its president and attested by its secretary, and the annexed coupons to be executed with the engraved signature of its secretary, this — day of ——, one thousand eight hundred and ninety-one.

—— ——, *President.*

Attest:

—— ——, *Secretary.*"

(*Form of Coupon.*)

$30.

On the first day of ——, 18—, the Woodbridge Canal and Irrigation Company will pay, at the office of the Atlantic Trust Company, in the City of New York, upon presentation and surrender of this coupon, to the bearer, or to the registered owner hereof, thirty dollars in United States gold coin for six months' interest then due on Bond No. ——.

—— ——, *Secretary.*

(*Form of Trustee's Certificate.*)

The Atlantic Trust Company hereby certifies that the within bond is one of the bonds issued under and in pursuance of a certain mortgage or deed of trust, dated ——, and duly executed and de-
100 livered to said Company, as Trustee, by the Woodbridge Canal and Irrigation Company.

THE ATLANTIC TRUST COMPANY,
By —— ——, *President.*

Now, therefore, this indenture witnesseth, that for the purpose of securing the said bonds for $100,000, to be issued as herein provided for, and the interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the premises, and of ten dollars to it in hand paid by the said trustee, at or before the execution and delivery of these presents receipt whereof is hereby acknowledged, the said Woodbridge Canal and Irrigation Company has bargained, sold, granted, conveyed, assigned, and set over, and by these presents does bargain, sell, grant, convey, assign and set over unto the said Atlantic Trust Company, as Trustee, its successors and assigns, the entire corporate property of said Woodbridge Canal and Irrigation Company, and all its lands, tenements, hereditaments, privileges, franchises, rights of way, flowage and riparian rights easements, and fixtures now owned or hereafter to be acquired, and all its canals, flumes, headworks, gates, dams, bridges, etc., now constructed or to be hereafter constructed, extending from the present point of diversion, in the Mokelumne River, in the town of Wood-

bridge, in San Joaquin County afresaid, in a westerly di-
101 rection, to Taison and New Hope, in said county, and in an easterly and southerly direction to the Calaveras River, with all or branch canals that may be hereafter constructed within said territory, south and west of the Mokelumne River, and all the estate, right, title and interest, claims and demands, rights of way, and other easements, whether at law or in equity, of the said Company of, in and to the same, and each and every part and parcel thereof; and also all buildings, fixtures and personal property thereon, or belonging to said Company, and all receipts, incomes and profits which said Company shall derive on account of any contract or agreement for the transfer of water rights, as appurtenant to specified lands, excepting and not including the annual rentals for the use of said water and interest on such contracts or agreements.

To have and to hold the above-granted premises and property with the appurtenances, unto the said Trustee, its successors and assigns, in trust and upon the trusts, uses and purposes hereinafter expressed of and concerning the same, for the use and benefit of any and all persons or corporations, who shall hereafter at any time become the purchasers, holders or owners of any of said bonds, subject to the terms, provisions and stipulations in said bonds contained, and also subject to the possession and management of said canal system and property by said company, its successors, assigns or lessees, so long as no default shall be made in the payment of either interest or principal of said bonds, as herein provided, and so long as the said company shall well and truly observe, keep and perform
102 all and singular the covenants, agreements, conditions, and stipulations in said bonds and in this indenture, contained and set forth, and which are to be observed, kept and performed by and on the part of said company.

Article First.

It is further agreed that the company, with the consent in writing of the trustee or its successor or successors, may sell and convey any lands or other property herein mortgaged and not necessary or required to be retained for the convenience and use of the Company, and that the proceeds of said sales whenever they amount to the sum of one thousand dollars, or more, shall be applied to the purchase and cancellation of one or more of said mortgage bonds, as hereinafter provided for, or of any lien which may be a prior lien upon the premises mortgaged. And the trustee shall then be authorized to release the land or other property thus sold and conveyed from this mortgage; or in lieu of purchasing and canceling said bonds, the proceeds of said sale may be invested under the sanction and with the approval of the trustee, in the purchase of other property, real or personal, required for use by said Company, which said other property shall be deemed as embraced in, and covered by, this mortgage.

Article Second.

It is further mutually agreed, that until the 1st day of January, 1895, unless sooner exchanged in payment of bonds as herein pro-

vided for, the Company will reserve in its treasury one hun-
103 dred thousand shares of the capital stock of this company of the par value of one hundred thousand dollars, being the increase thereof duly authorized by the stockholders of said company at a meeting held and called for that purpose on the 11th day of July, 1891.

At any time between the 1st day of July, 1894, and the 1st day of January, 1895, upon the presentation and surrender to the company of one or more of the bonds herein provided for, together with all the unmatured coupons thereto attached, the company will deliver to the person or persons so surrendering said bonds in full payment therefor, a certificate or certificates representing one thousand shares of said capital stock so reserved for each bond of the face value of $1,000, and all unmatured coupons annexed, and all bonds surrendered shall be forthwith canceled.

Article Third.

It is further mutually agreed that all moneys received by the company on account of any contract or agreement, now executed or hereafter to be executed, for the transfer of water rights as appurtenant to specified lands, excepting interest on such contracts or agreements, and rentals as the same accrue and are received, to the amount of the bonds sold and delivered, shall be paid by the company to the said trustee, to be held by the trustee as a sinking fund for the redemption of the bonds herein provided for. And whenever and as often as the sum of five thousand dollars or more
104 shall be held by the said trustee in said sinking fund, the trustee shall, whenever requested in writing by the company, forthwith give notice by publication in a newspaper, published in the city of New York, and a newspaper published in the city of San Francisco, for such time as it may deem advisable, that it will purchase and redeem out of said sinking fund, after deducting the expenses of said publication, bonds to the extent of the cash available in said fund, at a price not exceeding par and accrued interest. And such bonds as may be purchased and redeemed by the trustee shall be forthwith canceled; and should none be offered, the trustee shall retain the moneys in said sinking fund at interest, until another like sum of five thousand dollars shall be paid into said fund, in which case the same proceedings shall be again taken as above set forth.

Article Fourth.

The company covenants and agrees to use the bonds herein provided for the following purposes only:

To provide funds to extend and thoroughly complete, equip and maintain the canal and its branches; to erect a dam or dams in the Mokelumne River, and maintain the same; to pay and discharge the floating debt of said Company, and to provide the necessary funds for the general expenses of the Company.

And the Trustee shall, from time to time, upon the joint order of the President and Secretary of the Company, making request therefor, issue and deliver to the persons named in said order, the bonds, or any of them herein provided for.

105

Article Fifth.

And the Company does hereby covenant, promise, and agree for itself, its successors and assigns, to and with the Trustee, and its successor or successors, that the said Company will well and truly pay each and every of said bonds issued by it and secured by this mortgage, together with the semi-annual interest, at the rate of six per cent. per annum, at the times, in the manner, and at the places specified therein, without deduction for any cause.

And in case the Company shall, for the space of six months, make default in payment of said semi-annual interest to become due on any, either, or the whole of said mortgage bonds, then after the expiration of said six months from the time it became due, and without demand or notice, at the election or option of the majority in interest of the holders of said bonds then issued and outstanding expressed in writing, the whole principal sum mentioned in each and all of said mortgage bonds then outstanding, shall forthwith become due and payable, and the lien and encumbrance hereby created for the security and payment thereof may at once be enforced.

Article Sixth.

It is further agreed in case of default in the payment of the semi-annual interest of the said bonds for the space of six months, or of any tax or assessment for the same period, that the Trustee and its successors are hereby expressly authorized and empowered,

106 upon the request in writing of the owners or holders of the majority of said bonds, then outstanding, or if the principal of the bonds shall be due, upon the request of the holders of a majority of the bonds outstanding, to enter into and upon, and to take actual possession of all the property, real and personal, and rights, franchises and privileges of the premises hereby conveyed, and each and every part thereof, and by themselves, or by their attorneys or agents, have, hold, use and enjoy the same, and from time to time make all repairs and replacements, and all useful alterations, additions and improvements thereto, as fully as the Company might have done before such entry, and to collect and receive all tolls, incomes, rent, issues and profits of the same and of every part thereof. The Trustee and its successor or successors shall and may, and hereby are expressly authorized and empowered on such default to sell at public auction, to the highest bidder, the entire property, real and personal, rights, franchises and privileges herein conveyed. Said sale shall be held either in the City of Stockton, or the City of San Francisco. At least two months' notice shall be given of the time, place and terms of said sale, by advertising the same in one or more newspapers of good circulation, in the city of San Francisco, and wherever else required by law, and continuing such advertisement at least once a week, until the time for sale; and that the Trustee may, at its discretion, adjourn said sale from time to time, giving reasonable notice of the time and place where it will take place, and as the attorney

or attorneys in fact of the Company, or its successors and as-
107 signs, shall have full power and authority to make, execute and deliver to the purchaser or purchasers thereof good, valid and sufficient deed or deeds of conveyance or conveyances, assignments or transfers, in fee simple or otherwise, of the entire property herein conveyed, and all the rights, franchises and privileges of the Company, or its successors or assigns, which conveyance or conveyances, transfer or deeds, shall vest in the purchaser or purchasers all the right, title, interest and estate whatsoever, reversionary, or in possession, or which they may be entitled to receive, have or hold of the Company; and said sale shall be a complete and perpetual bar or estoppel, both in law and in equity, against the Company, its successors and assigns, and all persons or parties lawfully claiming by, from or under it or them, in anywise or manner whatsoever; and the said Company hereby covenants and agrees to waive, and expressly covenants and agrees that neither this Company, nor its successors, shall have, or claim any advantage of any valuation, appraisement or extension.

The amount of the purchase money on said sales may be paid and satisfied in whole or in part by the outstanding mortgage bonds, and matured and unpaid coupons, or any of them secured hereby; and said bonds and coupons shall be received in whole or part payment and satisfaction by the Trustee, its successor or successors, according to their value, to be ascertained and determined by the net amount arising from such sale, provided, however, that if dur-
ing the pendency of such proceedings or of any foreclosure
108 proceedings for nonpayment of interest coupons, the said interest be paid, together with the expenses of the legal proceedings then taken, all foreclosure or other proceedings shall then terminate and be discontinued.

Article Seventh.

Out of the moneys received from any tolls, income, rents, profits and earnings of said canal and premises, or out of the proceeds of said sale, so to be made as aforesaid, or the sinking fund above provided for, after first deducting the expenses, disbursements, costs, charges, and counsel fees, incurred in and about the conducting of said sale, or the working and operating said canal, including the compensation and commission of said Trusee in and about the execution of this trust, and all expenses of repairs, replacements, alterations, additions and improvements, and all payments for taxes, assessments, charges or liens on said premises, or any part thereof, the Trustee shall, if the amount be sufficient for that purpose, pay said mortgage bonds, or so many of them as shall be outstanding and unpaid, together with all interest then due upon the same; and if the amount be insufficient, then it shall divide the same pro rata among the outstanding bonds, and the surplus of all such moneys or proceeds of sale, if any there be, shall be paid to the Company, or its successors or assigns.

109 Article Eighth.

Nothing herein shall be construed as limiting the right of the Trustee to apply to any competent Court for a decree of foreclosure and sale under this indenture, or for the usual relief in such proceedings, and the said Trustee, or its successor, may, in its discretion, so proceed.

Article Ninth.

The said Trustee shall be entitled to a reasonable compensation for its services rendered under the trusts herein created, and also to reimbursement for all expenses, legal or otherwise, necessarily incurred by it in administering the same, and all such compensation and expenses, are secured hereby.

In case it shall be required by the holders of bonds secured by this indenture to enforce any of their rights hereby secured, the said Trustee shall not be required to incur any expense or liability in connection therewith, until satisfactorily indemnified therefor, and all powers in these presents conferred upon the Trustee (except as otherwise herein specifically provided) shall be deemed discretionary, and it shall incur no liability in exercising or declining to exercise such discretionary powers, provided it acts in good faith in regard thereto.

Article Tenth.

And it is further agreed that the Trustee, or its successor, may appoint and employ, at the expense of the said Company, all such attorneys or other agents, as may be necessary in the execu-
110 tion of any of the trusts herein declared, and shall not be answerable for the defaults or other misconduct or neglect of such attorneys, or other agents, unless chargeable with culpable negligence in their selection.

Article Eleventh.

And it is further agreed, that in case of the death, removal, resignation, incapacity or insolvency of the Trustee or its successor, or in case two-thirds in interest of the holders of outstanding bonds at any time so elect, a majority in interest of the outstanding bondholders may, by a writing under their hands and seals, appoint and designate one or more competent persons or corporations, to fill the vacancy so occurring in manner aforesaid; and until the bondholders make such selection, then the President of the Company, with the consent in writing of the owners or holders of one-tenth of all of said bonds outstanding may apply to a Judge of any court of competent jurisdiction, who shall appoint one or more persons to fill the vacancy until the bondholders make an appointment; and in either case the person or persons selected, shall have and possess, and be vested with, the same rights and powers as a Trustee or Trustees, as he or they would have had or possessed, or been vested with, had he or they been originally made a party or parties to this indenture, and shall perform said duties in all respects; and until such appoint-

ment shall be so made, in manner aforesaid, said remaining surviving, acting or competent Trustee shall have full power and authority to execute each and all trusts hereby created.

111 In case at any time thereafter, two or more Trustees should be appointed in the place of one herein named, and there should thereafter become a vacancy by the death, resignation or removal of one or more of said Trustees, the remaining Trustee or Trustees until such time as another may be appointed, shall perform all the duties of his trust, and during such time all acts done by him shall be as valid as if performed by all the Trustees.

Article Twelfth.

And the Company, for itself and its successors and assigns, hereby covenants and agrees, for the consideration aforesaid, to execute and deliver any further deed or deeds to the Trustees, its successor or successors, reasonable and necessary to accomplish the purpose and intent of this indenture, particularly for the conveyance of any right, interest or property acquired by said Company subsequent to the date of this agreement.

Article Thirteenth.

The company further agrees that it will well and truly pay and discharge each and every tax, or assessment, which may, from time to time, be lawfully levied upon the said property or franchise, the lien of which might or could be held superior to the lien of this indenture, to the end that the priority of the lien created by this indenture may at all times be fully sustained.

Article Fourteenth.

The trustee hereby accepts the trusts herein contained and undertakes and agrees to fulfill all the duties and obligations hereby
112 imposed upon it in accordance with the true intent and meaning of this indenture.

Article Fifteenth.

The said company, for itself, its successors and assigns, the above granted and bargained premises unto the said trustee, its successors and assigns, will forever warrant and defend against all lawful claims and demands whatsoever, against the same.

Article Sixteenth.

Provided always, and this grant and conveyance is upon the express condition that upon the payment in full of such of said bonds, as shall have been issued and sold, and the interest due thereon and upon the surrender thereof to the company, and due proof of such payment and surrender, to the satisfaction of the trustee or its successor, or at any time before any of said bonds are sold and issued, on the demand in writing of said company for the cancellation of

said deed of trust, then the estate, title and interest of the sai
trustee, or its successor, shall cease, determine and become void, an
said trustee shall, upon the request of the company, its successors
assigns, duly execute and deliver such proper release or reconveyanc
as may be necessary for the purpose of revesting the record title
said property in the company, its successors or assigns, free from a
liens, trusts or encumbrances hereby created.

In witness whereof, the said parties of the first and second part
have caused these presents to be sealed with their respectiv
113 corporate seals and subscribed by their respective president
and attested by their respective secretaries, on the day an
year first above written.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

On this — day of ——, in the year one thousand eight hundre
and ninety-one, before me, —— ——, a notary public in and fo
said city and county, residing therein, duly commissioned and sworn
personally appeared —— ——, known to me to be the president o
the corporation "Woodbridge Canal and Irrigation Company," tha
executed the within instrument, and —— ——, known to me to b
the secretary of the said corporation, and they each severally ac
knowledged to me that such corporation executed the same.

——— ———,
Notary Public.

STATE OF NEW YORK, *City and County of New York, ss:*

On this — day of ——, in the year one thousand eight hundre
and ninety-one, before me, —— ——, a notary public in and fo
said city and county, residing therein, duly commissioned and
sworn, personally appeared —— ——, known to me to be the presi-
dent of the corporation "Atlantic Trust Company," that executed
the within instrument, and —— ——, known to me to be the sec-
retary of the said corporation, and they each severally ac-
114 knowledged to me that such corporation executed the same.

——— ———,
Notary Public.

EXHIBIT "B."

Schedule of Properties.

I.

Those certain irrigation canals situated and being in the county
of San Joaquin, State of California, in township three (3) north
of range five, six and seven (5, 6, 7) east, and being known and
designated as follows, to wit:

That certain dam built and constructed in and across from either
bank of the Mokelumne river, in section 34, township 3 north of
range — east.

Franklin Canal, .601 miles.
Main Canal, East Branch, 9.280 miles.
East Branch—Excavation No. 2, 4.640 miles.
Davis, 2.408 miles.
North Branch, 2.043 miles.
Spanker Ditch, 1.505 miles.
West Branch Canal, 4.570 miles.
Carr Ditch, .410 miles.
Swain Lateral, .495 miles.
Castle Lateral, .653 miles.
Weber Lateral, .264 miles.
Harshner Canal, 1.070 miles.
Parsons Canal, .500 miles.

115 The above canals, ditches and laterals being part of the system located at its point of beginning at the dam in Mokelumne river at the town of Woodbridge, in the east half of section 34, township 4, north of range — east.

II.

Certain riparian rights, in all eighteen, along said Mokelumne river above and below the dam of the Woodbridge Canal and Irrigation Company.

III.

Certain grants of right of way lying and being within said township 5, north of ranges 6, 5 and 7 east, and township 4 north of ranges 5 and 6 east, numbering sixty-three in all, and having an aggregate acreage of 330.43 acres.

Certain contracts from the owners of the lands lying above said dam granting permission to said Woodbridge Canal and Irrigation Company, as assignee, to construct, maintain, etc., said dam in said river; numbering eleven in all.

V.

Certain parcels of real property situate and being in said county of San Joaquin, State of California, and bounded and particularly described as follows, to wit:

a. Being a small piece of land adjoining Block 2 in the town of Woodbridge, known as the "Mill property," being the land on which was erected the old flouring-mill and building heretofore sold to C. C. Blair; and further described as lots 4, 5, and 6 in block "F" of Wood's survey of the town of Woodbridge.

116 *b.* 13.28 acres of land, situate, lying and being in said San Joaquin county on the north bank of the Mokelumne river, immediately opposite said town of Woodbridge, and immediately adjoining the said dam of the said Woodbridge Canal and Irrigation Company, and known as and called the "Cowboy Tract."

c. Certain lands along the north side of said river adjoining the dam and works of said company at Woodbridge, and lying on the north side of said Mokelumne river; comprising in all 96.95 acres, and known and described as the "Journeay Purchase."

d. Those certain bottom lands situate in said county of San Joaquin, and described as fractions No. 1 and 2 and the east half of

the southwest quarter of section 32, township 4, north of range 7 east, M. D. B. and M.

VI.

Those three certain water rights and locations on the Mokelumne River at said Woodbridge, notices of which said locations were posted by Byron D. Beckwith on the bank of said river on the 22d, 23d, and 30th days of December, 1886, respectively, and filed in the office of the county recorder of San Joaquin county aforesaid, on the 31st day of December, 1886.

VII.

Those three certain water locations and claims to water flowing into Mokelumne river, particularly described as follows, to wit:

a. A claim to said water to the extent of 250,000 cubic inches per second at the point on the north bank of said river about
117 250 feet above and to the opposite side of where Green's mill formerly stood in the town of Woodbridge, notice of which bearing date 19th day of May, 1890, and recorded May 20th, 1890, in book "G," volume 8, page 251 of Miscellaneous Records of San Joaquin county, in the office of the county recorder of San Joaquin county.

b. A claim by one H. P. Perkins to said water to the extent of 345,600 inches, at the point where notice in writing was duly posted, that point being a pine tree on the south bank of said river near a suspended water pipe which leads across said river. Said notice bearing date November 6th, 1890, recorded November 30th, 1890, in book "L" of Mining Claims, pages 544 and 545 in the office of the county recorder of Calaveras county.

c. A claim to said water to the extent of 400 cubic feet per second at the point where notice in writing was duly posted by Byron D. Beckwith, that point being on the north bank of the Mokelumne river, on a live-oak tree about 300 feet north of a suspension pipe across said river; said notice being dated January 23, 1892, and recorded January 26, 1892, in book "A" of Water Rights, page 186, in the office of the county recorder of Amador county.

VIII.

All those certain pieces and parcels of land, being in the counties of Calaveras and Amador, and bounded and particularly described as follows, to wit:

The fractional southeast quarter of the southwest quarter of section 33, and fractional northwest quarter of the southwest
118 quarter of section 34; township 5 north of range 10 east, M. D. B. and M.; more particularly described in that deed made by Byron D. Beckwith to the Woodbridge Canal and Irrigation Company the 8th day of February A. D. 1894, and recorded on the 27th day of June, 1894, in book "A," vol. 83, page 78, of Deeds, San Joaquin County Records; and in volume 24 of Deeds, at page 326, Calaveras County Records, and recorded in volume 10 of Deeds at page 269 of the Records of Amador County.

The said parcels of land containing in all 46.61 acres.

IX.

Certain tools and implements used in and about said irrigation canal in the maintenance of said works, office fixtures, three horses, one buggy and harness.

X.

Those certain promissory notes, payable to the Woodbridge Canal and Irrigation Company, and described as follows, to wit:

Note of A. M. Harshner, dated November 21st, 1892, for $400.00.

Note of R. J. and S. A. Parsons, dated January 31st, 1893, for $1,600.

Note of Helen Weber, C. M. Weber and Julia H. Weber, dated May 28th, 1894, for $3,946.02.

Note of Helen Weber, C. M. Weber, and Julia H. Weber, dated May 28, 1894, for $4,591.85.

Note of Helen Weber, C. M. Weber and Julia H. Weber, dated May 28, 1894, for $1,963.66.

119 Note of J. Bischofberger, dated May 28, 1894, for $1,530.20.

Note of H. C. Herron, dated May 28, 1894, for $1,834.25.

Note of Mrs. M. A. Shinn, dated May 28, 1894, for $425.00.

Note of F. T. Conan, dated May 28, 1894, for $648.00.

Note of A. M. Harshner, dated May 28, 1894, for $400.00.

Note of T. E. Jones, dated June 25, 1894, for $896.37.

XI.

All that certain right of way across a strip of land granted by J. J. Hinckley and wife to the Woodbridge Canal and Irrigation Company, along and over certain land of said Hinckley from the county road to the land acquired by said Woodbridge Canal and Irrigation Company on the 8th day of February, 1894, from Byron D. Beckwith hereinabove in this schedule specified.

[Endorsed:] Received a copy of the within amended bill of complaint this 14th day of December, 1895. Daniel Titus, Atty. for Respondent. E. P. Cole, Atty. for Pidge. Wm. M. Cannon and Paul C. Morf, Att'ys for Interveners. Filed December 16th, 1895. W. J. Costigan, Clerk.

120 In the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Complainant,

vs.

WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Respondents.

Order Taking Amended Bill of Complaint Pro Confesso.

In the above-entitled action the complainant, having on the 16th day of December, 1895, by leave of the said Court, filed herein its

amended bill of complaint, and service thereof having been dul
made upon the respondent, the Woodbridge Canal and Irrigatio
Company, and the time allowed by law in which to plead or answe
or demur to said amended bill of complaint on respondent's par
having expired and no plea, answer or demurrer on respondent
part having been filed, and no order of Court or stipulation
counsel for further time for respondent to plead, answer or demu
to said amended bill of complaint, having been made or procure
and the said respondent being now in default;

Now, therefore, on motion of Messrs. John B. Hall Esq., an
Scrivner & Schell, solicitors for complainant, it is ordered that th
complainant's said amended bill of complaint herein, be and th
same is hereby taken *pro confesso*, by and against the sai
121 respondent, the Woodbridge Canal and Irrigation Company
in accordance with law and the rules of this Court in tha
behalf made and provided.

JOHN B. HALL AND
SCRIVNER & SCHELL,
Solicitors for Complainant.

Entered March 5th, 1896.

W. J. COSTIGAN, *Clerk.*

122 In the United States Circuit Court, Ninth Judicial Circui
Northern District of California.

THE ATLANTIC TRUST COMPANY (a Corporation), Plaintiff,
vs.
THE WOODBRIDGE CANAL AND IRRIGATION COMPANY (a Corpora
tion), Defendant; P. A. BUELL & COMPANY (a Corporation
LOUIS EINSTEIN & COMPANY (a Corporation), FRESNO NATIONA
BANK (a Corporation), STOCKTON LUMBER COMPANY (a Corpo
ration), KUTNER-GOLDSTEIN COMPANY (a Corporation), FRANCI
COGSWELL, H. BENTLEY, BANK OF CENTRAL CALIFORNIA (a Co
poration), J. H. SWAIN, Interveners.

Petition of Intervention of P. A. Buell & Co. et al.

To the Justices of the Circuit Court of the United States for th
Northern District of California:

I.

The petition of intervention of P. A. Buell & Company, a corpo
ration, of the city of Stockton; Francis Cogswell, H. Bentley, J. H
Swain and Stockton Lumber Company, a corporation, all
123 the county of San Joaquin, State of California; Fresno Na
tional Bank, a corporation; Kutner Goldstein Company,
corporation, and Bank of Central California, a corporation, and Lou
Einstein & Company a corporation; all of the county of Fresno, Stat
of California, respectfully shows:

II.

That your petitioners, P. A. Buell & Company, Louis Einstein & Company, Fresno National Bank, Stockton Lumber Company, Kutner Goldstein Company, Bank of Central California at all times herein mentioned were and now are corporations organized and existing under and by virtue of the laws of the State of California.

III.

That at all times in this petition mentioned, the plaintiff, The Atlantic Trust Company was and now is *is* a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal place of business in the city and county of New York, in said State, and being incorporated for the purpose and with the express powers of holding and managing trusts and trust property.

IV.

That at all of said times The Woodbridge Canal and Irrigation Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the city and county of San
124 Francisco, and was formed for the purpose and with the express powers of owning and operating an irrigation canal in the county of San Joaquin in said State.

V.

That heretofore, to wit, on or about the 17th day of July, 1891, the said defendant made and executed one hundred (100) bonds numbered from one (1) to one hundred (100), both numbers inclusive, each of which said bonds was in the form and in the words and figures set forth in the amended bill of complaint of plaintiff, and to each of said bonds were attached twenty (20) interest coupons likewise executed by the defendant, each of which coupons was in the form and in the words and figures as set forth in plaintiff's said amended bill of complaint and numbered as therein alleged.

That each of said bonds when so executed as aforesaid, bore endorsed thereon certificates in the manner and form as set forth in the plaintiff's said amended bill of complaint.

That on or about the 17th day of July, 1891, and to secure the payment of said bonds so executed as aforesaid, the said defendant executed and delivered to the plaintiff, as trustee of the trusts therein created, its indenture of mortgage dated July 17, 1891, and executed in its corporate name by its president and secretary, to which mortgage was affixed its corporate seal. And on or about the same day said mortgage was executed by plaintiff, who accepted said trusts therein created and imposed upon said plaintiff. And said
125 mortgage was recorded on the 10th day of August, 1891, in the recorder's office of the county of San Joaquin, and was in words and figures as set forth in the plaintiff's amended bill of complaint.

VI.

That in and by said mortgage the said Woodbridge Canal and Irrigation Company did mortgage to this complainant, as trustee, to secure the payment of the aforesaid bonds, the entire corporation property of said Woodbridge Canal and Irrigation Company, and all its lands, tenements, hereditaments, privileges, franchises, rights of way, flowage and riparian rights, easements and fixtures then owned or hereafter to be acquired by it and all its canals, flumes, headworks, gates, dams, and bridges then constructed or to be thereafter constructed, extending from the point of diversion in the Mokelumne river, in the town of Woodbridge, in San *San* Joaquin County aforesaid, in a westerly direction to Taison and New Hope in said county, and in an easterly and southerly direction to the Calaveras river, with all other or branch canals that might be thereafter constructed within said territory south and west of the Mokelumne river; and all the estate, right, title and interest, claims and demands, rights of way and other easements, whether at law or in equity, of the said canal company of, in and to the same; and also all buildings, fixtures and personal property thereon or belonging to said canal company; and all receipts, incomes and profits which said
126 company shall derive on account of any contract or agreement for the transfer of water rights as appurtenant to specified lands, excepting the annual rentals for the use of said water and interest endorsed on such contracts or agreements.

VII.

That on said 17th day of July, 1891, and at the time of the execution of the said bonds and the said mortgage M. V. B. Watson was the president and M. T. Moses was the secretary of the said Woodbridge Canal and Irrigation Company, and as such president and secretary they were duly and fully authorized and empowered to execute the said bonds and mortgage, in the name and as the act of the said Woodbridge Canal and Irrigation Company, and to attach to said bonds and mortgage its corporate name, and to affix thereto its corporate seal, by resolution adopted by the vote of the holders of more than two-thirds of its capital stock at a meeting of its stockholders, duly and regularly called, notified, organized and held at the office of the Woodbridge Canal and Irrigation Company in the city and county of San Francisco, State of California, on the 11th day of July, 1891; and said president and secretary were further authorized to so execute said bonds and mortgage by resolution of the board of directors of the said Woodbridge Canal and Irrigation Company, duly passed and adopted.

That since the execution of said mortgage the Woodbridge Canal and Irrigation Company has constructed and now owns an irrigating canal in the county of San Joaquin, State of California, be-
127 ginning at a dam in the Mokelumne river, in the town of Woodbridge, in the southeast quarter (¼) of section thirty-four (34), in township four (4) north of range six (6) east, Mount Diablo base and meridian, and running thence through said sec-

on thirty-four (34) and through and across portions of sections
ree (3), ten (10), eleven (11), fourteen (14), twenty-three (23),
venty-six (26), thirty-five (35) and thirty-six (36), in township
ree (3), north of range six (6) east, and through and across por-
ons of sections one (1), twelve (12) and thirteen (13), in town-
ip two (2), north of range six (6) east; and also through and
ross section eighteen (18), in township two (2), north of range
ven (7) east, and following the line of division between subdi-
isions fifty-one (51) and sixty-one (61) of El Rancho Del Campo
e Los Franceses.

That the said Woodbridge Canal and Irrigation Company has
kewise constructed and now owns and is operating sundry branch
r lateral canals, diverting from said main canal above referred to,
a general westerly direction and irrigating the lands along their
urse.

That the Woodbridge Canal and Irrigation Company, since the
xecution of said mortgage, has likewise acquired and now owns
arious other lands and properties, contracts and mortgages in said
unty of San Joaquin and in the Northern District of the State of
alifornia, a list of which properties is as set forth in said amended
ill of complaint.

28 VIII.

That ninety-two (92) of the aforesaid one hundred (100) bonds
ith said relative coupons attached, secured by said mortgage, have
en by the said defendant duly issued and negotiated for value in
ne course, for money paid, labor done, and property actually re-
ived, and are now outstanding, but the rights of the holders of
venty-six (26), thereof to share in the protection of the lien of the
ortgage is disputed by the plaintiff and the holders of the sixty-
x (66) bonds mentioned in the complaint.

IX.

That on or about the 13th day of January, 1894, the said defend-
nt, for labor done and property actually received, made, executed
nd delivered to the intervener P. A. Buell & Company its certain
romissory note whereby it promised to pay to said intervenor on or
efore October 1st, 1894, the sum of $2,210.06 dollars, with interest
hereon at the rate of eight per cent. per annum from date until
aid, and as collateral security for the payment of said promissory
ote, the said defendant pledged to said intervener four of its said
onds numbered 70, 71, 72 and 73 with all the interest coupons
hereon, except those payable prior to September 1st, 1894.

That no part of said promissory note, nor of either the principal
r coupons of any of said bonds has been paid.

29 X.

That on or about May 25, 1894, the said defendant for value re-
ived, made, executed and delivered to the said intervener P. A.
Buell & Company, its certain promissory note whereby it promised
nd agreed to pay to said intervener on or before October 1st, 1894,
1,000 dollars, with interest thereon at the rate of eight per cent. per

annum from date until paid, and as collateral security for the payment of said promissory note the said defendant pledged to said intervener two of its said bonds, numbers 86 and 87, with all the interest coupons thereon, except those payable prior to September 1st, 1894.

That no part of said promissory note nor of either the principal of either of such bonds or of any of the coupons thereon has ever been paid.

XI.

That on the 25th day of May, 1894, the said defendant for value received made, executed and delivered to the said intervener P. A. Buell & Company its certain promissory note whereby it promised and agreed to pay to said intervener on or before October 1st, 1894, the sum of $1,559.74 dollars, with interest thereon at the rate of eight per cent. per year from date until paid and as collateral security for the payment of said promissory note the said defendant pledged to said intervener three of its bonds numbers 88, 89 and 90, with all the interest coupons thereon except those payable prior to September 1st, 1894.

130 And no part of said promissory note nor of the principal of either of said bonds nor of the coupons thereon has ever been paid.

XII.

That on the 4th day of August, 1894, the said defendant for value received made, executed and delivered to the said intervener P. A. Buell & Company its certain promissory note whereby it promised and agreed to pay to said intervener on or before October 1st, 1894, $1,807.43 dollars, with interest thereon from date until paid at the rate of eight per cent. per year, and as collateral security for the payment of said promissory note the said defendant pledged to said intervener three of its said bonds, numbers 93, 94 and 95 with all the interest coupons attached except those payable prior to September 1st, 1894.

And no part of said note nor of the principal of either of said bonds nor of the coupons thereon has ever been paid.

XIII.

That on the 19th day of February, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its promissory note, whereby it promised and agreed to pay to said Lee $549.15 dollars one year thereafter, with interest thereon from date until paid at the rate of eight per cent. per year, and as collateral security for the payment of said note the said defendant pledged to said Lee one of its said bonds, number 69, with all the coupons attached except those payable prior to September 1st, 1894.

131 And thereafter, and before this suit, for value, the said Lee, indorsed, transferred and delivered said promissory note and said pledged bond to secure the same to the said intervener, Fresno National Bank.

And no part of said note nor of said bond has ever been paid.

XIV.

That on May 1st, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its promissory note whereby it promised and agreed to pay to said Lee the sum of $1,312.55 dollars one year thereafter, with interest thereon from date until paid at the rate of eight per cent. per year, and as collateral security for the payment of said note the said defendant pledged to said Lee one of its said bonds, number 83, with all the interest coupons attached except those payable prior to September 1st, 1894. And thereafter and before this suit, said Lee, for value indorsed, transferred, assigned and delivered said promissory note and said bond so pledged as aforesaid to said intervener Louis Einstein & Company.

And no part of said note nor of said bond has ever been paid.

XV.

That on the 3d day of October, 1893, the said defendant, for value received, made, executed, and delivered to the said intervener, Stockton Lumber Company, its certain promissory note whereby it promised and agreed to pay to said intervener the sum of $1,000 dollars, one day thereafter, with interest thereon from date until paid
132 at the rate of one per cent. a month, and as collateral security for the payment of said note the said defendant pledged to said intervener two of its said bonds, numbers 51 and 52, with all their coupons attached, except those payable prior to March 1st, 1894.

And no part of said note nor of either of said bonds has ever been paid.

XVI.

That on April 17th, 1894, the said defendant, for value received, made, executed, and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of $1,000 dollars one year thereafter, with interest thereon from date until paid at the rate of eight per cent. a year, and as collateral security for the payment of said note defendant pledged to said Lee one of its said bonds number 75, with all its coupons attached except those payable prior to September 1st, 1894.

XVII.

That on April 17th, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note whereby it promised and agreed to pay to said Lee the sum of $1,000 dollars one year thereafter, with interest thereon at eight per cent. a year from date until paid, and as collateral security for the payment of said note defendant pledged to said Lee one of its said bonds, number 81, with all its coupons attached, except those payable prior to September 1st, 1894.

133

XVIII.

That on August 4th, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of $702.11 dollars one year thereafter, with interest thereon at eight per cent. a year from date until paid and as collateral security for the payment of said note defendant pledged one of its said bonds, number 99, with all its coupons attached, except those payable prior to March 1st, 1895.

XIX.

That on August 4th, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note whereby it promised and agreed to pay to said Lee the sum of $1,000 dollars one year thereafter, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note defendant pledged to said Lee one of its said bonds, number 98, with all its coupons attached, except those payable prior to September 1st, 1894.

XX.

That on the fourth day of August, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note whereby it promised and agreed to pay to said Lee the sum of $1,000 dollars one year thereafter, with interest at the rate of eight per cent. a year from date until paid, and as collateral security for the payment of said note the said defendant pledged to said Lee one of its said bonds, number 96, with all its coupons
134 attached, except those payable prior to September 1st, 1894.

XXI.

That after the respective dates of the said five last-mentioned notes, described in paragraphs 16, 17, 18, 19, and 20, said Lee, for value, indorsed, transferred, assigned and delivered said five (5) promissory notes above mentioned and the bonds to secure the same, viz., numbers 75, 81, 99, 98, and 96, to the firm of Alexander and Goodman, and thereafter and before the commencement of this suit said Alexander and Goodman, for value indorsed, transferred, assigned and delivered to said intervener Bank of Central California, the aforesaid promissory notes and the said bonds pledged to secure the same.

And no part of either or any of said promissory notes or of any of the said bonds has ever been paid.

XXII.

That on May 25th, 1894, the said defendant, for value received, made, executed, and delivered to M. J. Lee its certain promissory note whereby it promised and agreed to pay to said Lee the sum of $1,000 dollars one year thereafter, with interest thereon at eight per cent. a year from date until paid, and as collateral security, for the

payment of said note said defendant pledged to said Lee one of its said bonds number 85, with all its coupons attached, except those payable prior to September 1st, 1894, and thereafter for value, said Lee indorsed, assigned, transferred and delivered said note
135 and bond to Alexander and Goodman, who thereafter and before the commencement of this suit, for value, assigned, indorsed, transferred and delivered to said intervener Kutner Goldstein Company said note and bond.

And no part of either said note or bond has ever been paid.

XXIII.

That on October 30th, 1893, for value received, the said defendant made, executed and delivered to said intervener Joseph H. Swain, its certain promissory note whereby it promised and agreed to pay to said Swain the sum of $665 dollars on or before one year thereafter, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note, said defendant pledged to said Swain one of said bonds, number 53, with all its coupons attached except those payable prior to March 1st, 1894.

And no part of either said note or said bond has ever been paid.

XXIV.

That on the first day of May, 1894, for value received, the said defendant made, executed and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of $1,000 dollars one year thereafter, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note said defendant pledged to said Lee one of its said bonds, number 82, with all its coupons attached except those payable prior to September 1st, 1894.

136 And thereafter the said Lee for value, indorsed, assigned, transferred and delivered said note and bond to the Bank of Lodi a corporation, and thereafter and before the commencement of this suit, for value received, the Bank of Lodi indorsed, assigned, transferred, and delivered the said note and bond to the said intervener Frances Cogswell.

And no part of either said note or bond has ever been paid.

XXV.

That on February 13, 1894, for value received, the said defendant made executed and delivered to said intervener H. Bentley, its certain promissory note, whereby it promised and agreed to pay to said Bentley the sum of $581.05 on October 1st, 1894, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note said defendant pledged to said Bentley one of its said bonds, number 68, with all its coupons attached, except those payable prior to September 1st, 1894.

And no part of either said note or said bond has ever been paid.

XXVI.

That on August 4th, 1894, for value received, the said defendant made, executed and delivered to the said intervener H. Bentley, its certain promissory note, whereby it promised and agreed to pay to said Bentley the sum of $610.71 dollars on the first day of October, 1894, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note, said defendant
137 pledged to said Bentley one of its said bonds number 92, with all its coupons attached except those payable prior to September 1st, 1894, and no part of either said note or said bond has ever been paid.

XXVII.

That on the 3d day of October, 1894, the plaintiff filed its bill of complaint to foreclose the mortgage of the defendant and a receiver was duly appointed and on the 14th day of December, 1895, the said plaintiff filed its amended bill of complaint and after the time for appearance, the said defendant defaulted and neglected to appear and in due time the plaintiff had entered a rule taking its bill *pro confesso*.

XXVIII.

That by its amended bill of complaint plaintiff sought to foreclose said mortgage but claimed and alleged therein that only sixty-six (66) bonds had been issued by defendant, and that the bonds of your petitioner, never had been issued, were void, and were still owned by the defendant and praying *inter alia*—

"That it be determined by the decree of this Honorable Court that said sixty-six (66) bonds hereinbefore mentioned, were legally and lawfully issued and sold, and that the same are now outstanding and unpaid and that said Court declare and adjudge that the entire principal sum of said sixty-six (66) bonds so issued and sold, is unpaid, due and payable; and that said Court further, by its said decree, fix and determine the amount of money due for prin-
138 cipal and interest upon said bonds and enter judgment therefor against the said Woodbridge Canal and Irrigation Company in favor of your orator, as trustee for said holders of said sixty-six (66) bonds, and that this Court further by its decree ascertain, fix and determine a reasonable and suitable attorneys' fee for payment of the services of your orator's attorneys in this action; and further fix and determine the amount to be paid your orator as compensation for its services as trustee, and that your orator have judgment against the said Woodbridge Canal and Irrigation Company for the amount found due for principal and interest upon said sixty-six (66) bonds—for said attorneys' fee, and the amount due your orator for its services as trustee herein, and costs and expenses of this action.

"That further by said decree, this Court shall order all of said franchises, canals, lands, and other mortgaged premises and property, to be sold by the marshal of the said Northern Judicial District of the State of California at public auction, in accordance with law

and with the course and practice of this Honorable Court; that the proceeds of said sale may be applied in the payment of the expenses of sale and of the costs in this action; and of said trustee's commissions, and counsel fees, and in the payment of the amount found due by this Honorable Court upon said outstanding bonds to the persons holding the same; that said defendant, and all persons claiming, or to claim by, through or under it, subsequent to the exe-
139 cution of said mortgage, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all right, title, claim, or equity of redemption, in the said mortgaged property and premises, and every part thereof. That the complainant, or any other party to this suit, or any bondholder, may become a purchaser at such sale; that the marshal execute deeds to the purchaser or purchasers, and that said purchasers be let into the possession of the property bought by them, on production of such deed; and that it be further adjudged and decreed that any of said bondholders may be purchasers of said property or any portion thereof, and that they may be permitted to pay for the property so purchased by them in the bonds held by such purchasers *pro tanto*, and that such other and further relief may be by said decree given in the premises as to this Court shall seem meet and agreeable to equity."

And your petitioners further show that the plaintiff who is the trustee for all the bondholders of the defendant and whose duty it is to represent and protect all the bondholders, nevertheless refuses and neglects to represent and to protect petitioners, and attacks and assails the validity of said twenty-six (26) bonds of petitioners and refuses and has refused and will refuse to allow petitioners—the holders of said twenty-six (26) bonds—to share in foreclosure proceedings and in the proceeds of the sale of the property of defendant.

And therefore, your petitioners pray that they may be al-
140 lowed to intervene and become parties to the above cause and that it be adjudged and decreed that their twenty-six (26) bonds issued by the defendant are good, valid and binding obligations of the defendant and are secured by the mortgage set forth in the complaint, and that the bonds of your petitioners be declared to be a valid and subsisting lien on the property and franchise of defendant, and that the mortgage of defendant be foreclosed and that your petitioners be allowed their costs, disbursements and attorneys' fees for prosecuting this proceeding, and for such other and further relief as to equity may seem meet and as may be necessary to protect the rights of the owners of the said twenty-six (26) bonds secured by said mortgage.

EDW'D P. COLE AND
WOOD & LEVINSKY,
Solicitors for Petitioners.

[Endorsed:] Service by copy of the within petition is hereby admitted this 25th day of March, 1896. Scrivner & Schell and John B. Hall, Solicitors for Complainant. Service by copy of the within notice and petition is hereby admitted this 25th day of March, 1896. Daniel Titus, Solicitor for Defendant. Filed June 12, 1896. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

141 At a special session of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California held at the courtroom in the city and county of San Francisco, on Friday, the 12th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: Honorable Joseph McKenna, Circuit Judge.

No. 11950.

ATLANTIC TRUST COMPANY
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY.

Order Allowing Intervention of P. A. Buell & Co. et al. to be Filed.

Ordered that the motion of P. A. Buell & Co. *et al.* for leave to file petition in intervention herein be, and hereby is granted, J. J. Scrivner, Esq., counsel for complainant, being present and not objecting thereto.

142 At a stated term, to wit, the March Term, A. D. 1897, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Monday, the 5th day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable William W. Morrow, Circuit Judge.

No. 11950.

THE ATLANTIC TRUST COMPANY
vs.
THE WOODBRIDGE CANAL AND IRRIGATION COMPANY.

Order Directing Entry of Decree in Favor of Buell & Co. et al. Interveners.

The issues joined herein between complainant and P. A. Buell & Co. *et al.*, interveners, heretofore heard and submitted, having been fully considered, and the opinion of the Court having been filed, it is ordered that a decree be entered herein in favor of said Buell & Co. *et al.*, in accordance with the opinion filed.

143 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

Report of Receiver.

(Filed August 10, 1897.)

To the Honorable, the Justices of the Circuit Court of the United States, of the Ninth Judicial Circuit, Northern District of California:

Now comes E. C. Chapman, receiver appointed by the Court in the above-entitled cause, and reports to the Court as follows:

Upon receiving the order heretofore made by the Court in this cause appointing me receiver herein, and on the 3d day of October, 1894, I duly qualified as such receiver and entered upon the discharge of my duties as such. On the following day I visited the office, property and works of the company at Woodbridge, in the county of San Joaquin, and was there, by the superintendent in charge, placed in charge and possession of the properties of the corporation described in the schedule of properties handed to me at the time of my appointment, which property is fully de-

144 scribed in a report made by me on the 26th day of December, 1894, now remaining on file in this court. After a full and careful examination of all the properties aforesaid and ascertaining the condition thereof, balancing up the books of the Company and procuring a trial balance thereof with a list of bills receivable, securities and other papers belonging to or affecting the property of the corporation, and on said 26th day of December, 1894, I made and filed a full and complete report of the result of my investigations and of proceedings as receiver in said cause down to that date, together with a report of my receipts and disbursements up to that time, which report, with the exhibits thereto attached, covers forty-five pages of typewritten matter and now remains on file in this court; wherefore, it is not deemed necessary at this time to repeat the same in detail but reference is now here made to the same and to the statements, inventory and accounts therein reported as fully as if the same were here repeated and made a part hereof.

Upon filing said report of December 26th, 1894, there was, as shown by said report, a balance due to me on account of moneys actually and necessarily expended up to that time in the management and care of the property committed to my charge as such receiver; there were no funds in hand with which to reimburse myself for such balance or to pay the necessary and current expenses of the care of said property, and no revenues coming in and no source of available revenue until at least the middle of the ensuing

year; I was necessarily under a regular expense of about three
145 hundred and fifty ($350.00) dollars per month for the help necessary to care for the property at the dam and canal, besides the expense of a bookkeeper for the time being and my own personal expenses in that behalf, and in the report I asked the Court for an order authorizing me to borrow the sum of seven thousand five hundred ($7,500.00) dollars to be used for the expenses and management of said property. No direct action was taken under this prayer, but subsequently and on the 23d day of January, 1895, upon notice to all the parties in interest and upon the hearing upon said report and upon testimony given in open court, an order was duly given and made by the Court authorizing and empowering me as such receiver to borrow the sum of five thousand ($5,000.00) dollars to be used by me as such receiver for the purpose of paying the expenses of the management and care of said property as a going concern at a rate of interest not to exceed eight per cent. per annum and to hypothecate or assign any and so many of the notes and mortgages or other choses in action belonging to the corporate defendant and then in my hands, as such receiver, as might be necessary as collateral security for the payment of the certificate or certificates to be issued by me for moneys loaned under said order. Under this order I made diligent and strenuous effort to borrow the whole or some part of the moneys so authorized to be borrowed but was unable to borrow the same upon any of the collateral securities held by me by reason of the rate of interest fixed in said order, and
of the fact that the mortgages held by me, and which I was
146 authorized to offer as collateral security for the payment of such loan, proved to be, upon examination, second mortgages upon the real property therein described and not deemed to be by money lenders good security for such loan.

Thereupon I reported to the Court my inability to raise any money under the order so given and made, and upon application therefor and notice duly given to all the parties, afterwards and on the 15th day of February, 1895, another order was duly given and made by the Court authorizing me, as such receiver, to borrow the sum of five thousand dollars for the purpose of paying the expenses and indebtedness already incurred by me in the management of said property and of paying the continuing and accruing expenses of such management and to issue my certificate or certificates therefor, bearing interest at the rate of not to exceed ten per cent. per annum, payable out of any funds that might come into my hands as such receiver applicable thereto, and providing that such certificates so issued should be and constitute a first and prior lien upon all the property described in the mortgage, for the foreclosure of which this action is brought, and if not paid prior thereto, then to be paid out of the proceeds of any sale of said property next after the costs of suit and sale, and before the payment of any other sum on account of said mortgage or the indebtedness secured thereby.

This order was made upon the report made by me to the Court dated January 30th, 1895, and duly filed herein, and to which
reference is now here made, in which report it was shown
147 among other things that there was then an actual indebtedness against the receiver in the sum of seventeen hundred

dollars for work and labor necessarily employed in the care of the property; that all his employees were threatening to leave unless promptly paid; that there were then about twenty thousand dollars outstanding time checks or certificates given by the defendant corporation for work, labor and material furnished prior to my appointment as receiver; that the standing credit of the defendant was such that men refused to work even for the receiver without prompt payment for their wages, and that I was without funds to make such payments or even to pay my own personal expenses or the expenses of my counsel in the management and care of the business.

Even under this order I found myself unable to raise money on certificates issued by me thereunder except in small sums raised from time to time, aggregating the sum of $2,350.00, and these were the only certificates ever issued under this or the first named order for money received, but in January and February, 1896, other certificates were issued in payment for labor and material, to the amount of $5,415.15, as shown by Exhibit "D" hereto annexed.

Pending the filing of the report and making of the order last aforesaid and in the hope of thereby raising the necessary funds to care for the property and manage the business as a going concern, on the 9th day of January, 1895, I made a report to this Court which was about that time duly filed herein showing that there were large bodies of land lying under the flow of the waters of the canals in my
148 charge capable of being irrigated therefrom, for which the owners had not secured or made contracts for water rights for said lands. Several of said owners having applied for contracts for the supply of waters for their respective parcels of land, I asked of the Court for authority to make such contracts and sell water rights as had been the custom of the company before my appointment. I then believed and still believe that under such authority ample funds could have been raised to have enabled me to pay all the expenses of protecting and caring for the property and carrying on the business of irrigation during the term of my appointment. But the plaintiff, and others interested in the action, seriously and earnestly opposed the granting of any such authority for the sale of water rights by the receiver, and the application was denied, so that during the term of my service as such receiver I have been entirely unable to avail myself of this, the best source of revenue to be derived from said property.

At the time of entering upon the discharge of my duties I found the large wooden dam of the company located at Woodbridge in a defective condition and was advised by competent engineers that the west abutment thereof must be immediately repaired. I proceeded at once to make the necessary repairs to prevent the dam washing away, and in the spring of 1895 found myself compelled to make many and expensive repairs upon the canals, lateral ditches, gateways, and bridges over the canals and ditches, rendered necessary by the ravages of winter, and by means thereof was enabled to con-
149 tinue to supply water to the farmers who had secured from the Company water rights, until the 23d day of July, 1895,

when, without any warning or means of prevention, the river undermined the easterly portion of the dam and carried away the east abutment thereof. This caused the river to change its channel and flow over the land formerly occupied by such abutment. The quantity of earth carried away by this change in the course of the stream amounted to some 10,000 cubic yards, which formerly constituted the easterly bank thereof. The sheet piling in front of the dam for a distance of one hundred and twenty feet was completely washed out and many of the heavy timbers supporting the large wooden front apron were displaced. This injury occurred in the midst of the irrigating season and it became necessary at once to repair the same so as to continue the supply of water for persons entitled to water for irrigation from the canals and property of the company. After the most strenuous efforts I succeeded in effecting these repairs and restoring the dam before the commencement of the winter rains of 1895, at a very heavy cost, a portion of which was paid by issuing to the farmers in the vicinity, who furnished most of the labor therefor, receiver's certificates to the amount of five thousand four hundred and fifteen and fifteen-hundredths ($5,415.15) dollars (as shown by Exhibit "D" hereto attached), the balance of which was paid in part by moneys advanced by myself for necessary labor and material and in part by time checks issued to persons for work and labor rendered in that behalf.

150 Before making these repairs I had learned that the dam had, for a long time before my appointment, been a subject of almost constant repair and great expense on the part of the company, and found from experience and observation that this was largely due to the conformation of the river channel immediately and for some distance above the dam, causing destructive accumulations of drift, producing great and unnecessary pressure upon the dam and requiring an expenditure of large sums of money at frequent intervals to remove the same. While making my repairs upon the dam I caused the river channel to be improved in this regard, using the material taken therefrom for the repair and strengthening of the dam, thereby relieving the latter from the extraordinary pressure to which it was theretofore subjected, and there has since been no trouble from that cause. But from other and different and unseen causes, growing out of the defective foundation in the original works, on the 26th day of July, 1896, a portion of this dam was washed away, and on the 13th day of August, 1896, I reported the facts and circumstances to this Court, which report now remains on file in this cause, and urged upon the Court and the parties in interest the necessity of taking early measures for the repair of the same, so far as to be prepared for the supply of water for the then succeeding and now current irrigation season, or the early sale of the property, as it was impossible for the receiver to raise the further and necessary funds for its protection without sale of the property or the aid of advances made by parties in interest; but in view of

151 an anticipated early final decree in this cause, no definite action has been taken under said report.

In November, 1896, I had entirely exhausted my own personal

resources in raising and advancing money to care for the property and continuing the work in my charge as such receiver, and demands were pressing upon me for further payments on such account, and for taxes upon the property, and I applied to the Court for a further order allowing me to borrow money on receiver's certificates, and upon such application and upon consent of plaintiff an order was given and made by the Court, authorizing me to so borrow the sum of $2,500.00, which I succeeded in doing and issued my certificate for that sum, bearing interest at the rate of ten per cent. per annum, dated November 27, 1896, making the total sum of cash ever received by me upon receiver's certificates, $4,850.00, and the total sum of certificates issued for cash, labor and material, $10,265.15.

The total cash received by me as receiver from all sources, down to June 1st, 1897, is shown by Exhibit "A," hereto attached, and amounts to $7,262.64.

The cash paid out by me as such receiver in the care and management of the property and business during the same period is shown by Exhibit "B" hereto attached, and amounts to the sum of $13,825.11.

The present indebtedness of the receivership (June 1st, 1897), exclusive of any compensation to be allowed to me for my services as such receiver, or of any compensation which may be allowed to my counsel for his services in that behalf, is as follows:

152 Balance due receiver on account of cash disbursements	$6,562.47
Amount of time checks outstanding, as shown by Exhibit "C" hereto annexed, plus such interest as may be allowed thereon	5,620.88
Amount of outstanding certificates, plus interest on each at the rate of ten per cent. per annum from their respective dates as shown by Exhibit "D" hereto annexed	10,265.15
Indebtedness for which no certificates or time checks are issued, as shown by Exhibit "E" hereto annexed	1,645.85
Total indebtedness, exclusive of compensation of receiver and his counsel	24,094.35
Add to this the cash received by receiver from sources other than outstanding certificates	2,412.64
Makes the total expenses of management and care of the property and business, exclusive of compensation of receiver and his counsel, for the thirty-two months named	$26,506.99

—or an average of $825.00 per month, as against over $1,800.00 per month, the average cost of the management and care of the same property and business, as shown by the books prior to my appointment, and at least one-third of this expense has been extraordinary

by reason of the necessary repairs and rebuilding of a portion of the dam, and improvement of the river channel to prevent further
153 breakage. Besides this the canals, locks, gates and ditches have been put and are now in better condition than ever before.

During the period of my administration I have been compelled twice to take proceedings in this court against parties for contempt in seizing and taking possession of property of the defendant corporation in my charge as receiver, both of which proceedings have necessarily involved some expense. I have also, as receiver, been made defendant in common with the defendant in this cause and the plaintiff herein in an action brought for the foreclosure of mortgage in the Superior Court of the county of San Joaquin, which mortgage covered certain lands in said county, upon which the defendant herein also held a mortgage, now in the charge and under the control of this receiver, and in which case I find upon investigation there is a serious question as to which of the mortgages covering said land has priority under the laws of this State. I have, therefore, appeared by counsel in said cause and answered and filed a cross-complaint therein and the case is still pending. I have also, during my administration, been cited to appear before the board of supervisors of the county of San Joaquin to show cause why the rates of compensation to be collected for water supplied for irrigation from the works in my charge as receiver should not be fixed by said board of supervisors and to such citation appeared before said board in person and by counsel and succeeded in preventing any action on the part of said board which should affect the use of said prop-
154 erty or the collection of rates for water supplied therefrom, pending the final determination of this action in the administration of said property by receiver.

In this cause and court one J. C. Thompson appeared by an elaborate petition, and caused me as receiver to be cited to appear and show cause why an order should not be made requiring me to issue to him grants of water rights to the amount and value of twelve thousand dollars or over, for and on account of certain scrip which he claimed to hold, which had been issued by the corporate defendant. Responsive to that citation I felt it to be my duty to appear and I did appear in person and by counsel, both by demurrer and answer which, after several hearings were argued both orally and by written brief, resulting in a denial of his application.

The bills receivable and securities which came into my hands upon my appointment were such as were given to the corporation in payment for water rights theretofore sold by the company to parties having lands under the flow of the canals, and were all on long time but most of them bearing interest. Upon some of these a part of the interest which has matured has been collected as shown by Exhibit "A" hereto attached. The annual interest, together with the rentals for water supplied, either by express terms or by common understanding, became due on the 1st of September in each year. I have found it impossible, without liquidation, to collect all the interests so maturing or of all the annual rentals, by reason of the in-

tense hostile feeling and of the many disputes which have arisen between the defendant company and its patrons and debtors
155 wherein large counter-claims are asserted for damages for alleged failure on the part of the company to keep the terms of its contracts and to supply water as and when required. In fact, in the one case now pending, to which allusion has already been made for the foreclosure of mortgage, wherein I have filed cross-complaint and asked for foreclosure of the mortgage held by me as receiver, and which mortgage has just matured, a counterclaim is asserted wherein damages are claimed largely in excess of the total amount of said mortgage and the interest due. Hoping for an early decree in and settlement of this case and that under such decree the property and assets in my hands would pass into the hands of those who should become more immediately interested therein, I have not deemed it wise to institute litigation for the purpose of making these collections, and there is now a balance due to the company of interest and water rates maturing on the 1st of September last amounting to $4,831.38 still remaining unpaid, as shown by Exhibit "G" hereto annexed. For this balance I should have felt it my duty to bring suit and endeavor to recover the same, had it not been, under the assurance of the parties litigant herein, an early termination of this suit and transfer of the claims has been anticipated.

The inventory of real property, bills receivable, etc., remains the same as at the time when I took charge as receiver and as shown by the exhibits annexed to my report of December 26th, 1894. The personal property, such as tools, implements, livestock, and material for building and repair, has necessarily changed; some of it
156 being worn out, some of it consumed, and other like property acquired in its place. Of this class of property now in charge of the receiver an inventory is herewith given, marked Exhibit "I" and hereunto annexed.

Upon entering upon the discharge of my duties and visiting the site of the works, I found matters almost in condition of a riot; the most intense feeling was existing on the part of a large number of people against the management; threats of all kinds were made against the corporate defendant and against the property under its charge, and which came into my charge as receiver. Being myself without funds to pay off the claims which had accrued for work and labor and without authority to pay them off, if I had had any funds, and also being without funds sufficient or adequate to pay the necessary expenses of the management and care of the property during my administration, it has been with great difficulty and with considerable peril that I have been able to maintain and preserve the property and prevent the same from falling into decay and ruin. Very frequently when I have visited the works, I have been met by angry and excited crowds threatening my own life and threatening to blow up the dam with dynamite and destroy the works, and it has been with great difficulty that I have been able to keep peace and preserve the works from destruction, and because of this difficulty and for the purpose of allaying this excitement and preserving the property of the company, I have been forced to make

such advances from my own private funds and from funds
157 raised upon my personal credit, as appear from this report and the exhibits thereto attached.

Immediately upon entering upon the discharge of my duties and ascertaining the condition of affairs, I retained Judge Chas. N. Fox as my counsel, and he has been my counsel and adviser and assistant in allaying the excitements and difficulties through which I have had to pass. I found it necessary to consult with him every week and sometimes almost daily for advice as to my powers and how best to meet the conditions which confronted me. He has aided me in raising the moneys which it has been necessary to raise, and in the name of his firm has appeared for me and on my behalf whenever and wherever it has been necessary for me to appear in court, either in this cause or in other courts and tribunals, consultation with boards of supervisors and other public officers, and has rendered a very large volume of service as counsel for me as such receiver.

Up to the present time no order has been made in this cause fixing any measure of compensation, either for myself or for my counsel, and no provision has been made for the payment of compensation either of receiver or his counsel. Anticipating and hoping an early decision of the cause, and being without funds upon which to draw for compensation, even if an order for fixing the same had been made, we have been awaiting the final termination of the cause before applying to the Court for such order, but I now respectfully petition the Court that an order be made in this cause allowing a just and reasonable compensation to me as receiver for my
158 services in this cause and providing for the payment thereof, and that a like order be made fixing and allowing a just and reasonable compensation for my counsel for his services as such and providing for the payment thereof; and that my accounts of receipts and disbursements as shown herein and my actions as such receiver be approved.

All of which is respectfully submitted.

E. C. CHAPMAN, *Receiver.*

CHAS. N. FOX,
Of Counsel for Receiver.

STATE OF CALIFORNIA, *City and County of San Francisco,* ss:

E. C. Chapman, being duly sworn, deposes and says: That he is the receiver who makes the foregoing report; that he has read the said report and the exhibits thereto attached and knows the contents thereof, and that the same is true of his own knowledge.

E. C. CHAPMAN.

Subscribed and sworn to before me this 17th day of June, 1897.

[SEAL.] THOS. E. HAVEN,
Notary Public in and for the City and County of San Francisco, State of California.

159 EXHIBIT "D."

Showing Outstanding Certificates, Each Bearing Interest from its Date at 10% Per Annum.

B. G. Lathrop, April 2, 1895	500.00
B. G. Lathrop, May 4, 1895	100.00
E. B. Harris, May 16, 1895	500.00
B. G. Lathrop, June 4, 1895	100.00
B. G. Lathrop, July 4, 1895	100.00
B. G. Lathrop, Aug. 4, 1895	100.00
J. U. Castle, Sept. 2, 1895	150.00
C. Swain, Sept. 2, 1895	150.00
E. Fisk, Sept. 2, 1895	150.00
B. G. Lathrop, Sept. 4, 1895	100.00
E. B. Harris, Oct. 4, 1895	100.00
E. B. Harris, Nov. 4, 1895	100.00
E. B. Harris, Dec. 4, 1895	100.00
E. B. Harris, Jan'y 4, 1896	100.00
Frank Davis for labor and material, Jan'y 14, 1896	2,000.00
Frank Davis, for labor and material, Jan'y 14, 1896	467.30
Frank Davis, for labor and material, Jan'y 31, 1896	681.85
Frank Davis, for labor and material, Feb., 1896	950.00
Frank Davis, for labor and material, Feb., 1896	456.00
J. J. Hinkley, services, Feb., 1896	860.00
Fox & Reser, Trustees' Cert., Nov. 27, 1896	2,500.00
Total	$10,265.15

160 [Endorsed:] Report of Receiver. Service of copy of the within is hereby admitted this 9th day of August, 1897. J. J. Scrivner, J. B. Hall, Geo. W. Schell, Attorneys for Plaintiff. Subject to Exceptions on File. Daniel Titus, Att'y for Def't. W. M. Cannon and P. C. Morf. Filed August 10, 1897. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the United States Circuit Court for the Northern District of California.

No. 11950.

THE ATLANTIC TRUST COMPANY, R. B. SALISBURY ET AL., Interveners,
vs.
THE WOODBRIDGE CANAL AND IRRIGATION COMPANY.

Jno. B. Hall and Scrivner & Schell, Substituted for Page, Eells & Wheeler.
Eq. for Receiver.
P. W. Morf and W. M. Cannon, for Interveners.
E. P. Cole, for Certain Interveners.
Elliott McAllister—Daniel Titus.

161 *Docket Entries.*

1894.

Oct. 3. Filed Bill of Complaint: Filed Appearance & consent.
Oct. 3. Filed Ord. appointing receiver & supplemental order of final Appt. Filed Bond of Receiver.
Dec. 10. Filed Bill of Complt. of R. B. Salisbury, *et al.*, Interveners.
Dec. 29. Filed Report of Receiver.

1895.

Jan. 2. Filed Notice of filing report & mo. to authorize Receiver to borrow, &c.
Jan. 3. Filed substitution of atty.
Jan. 10. Filed Pet. of Rec'r for authority to make contracts to supply water.
Jan. 14. Ord. mos. argued & Con. to 21st for further arg't.
Jan. 21. Ord. Petition &c., withdrawn without prejudice, &c.
Jan. 21. Ord. mo. granted & Receiver allowed to borrow $5,000.
Jan. 23. Filed Ord. authorizing Rec'r to borrow money.
Jan. 31. Filed Report & Petition of Receiver &c.
Jan. 31. Filed ord. fixing time for hearing &c.
Feb. 4. Filed Petition of Pidge for preferred claim.
Feb. 5. Filed ord. ex. time.

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Feb. 6. Ord. mo. for ord. authorizing Receiver to borrow money upon certificates &c. arg'd. & Con. to 13th. Filed ord. to S. C. *in re* claim of Pidge.
Feb. 6. Ord. ord. to s. c. con. to 13th.
Feb. 13. Ord. mo. & ord. to s. c. con. 14th.
Feb. 14. Ord. mo. & ord. to s. c. con. to 15th.
Feb. 14. Filed Demurrer to Complt. of Intervention.
Feb. 15. Ord. mo. granted & Interveners all'd exept. to ruling.
Feb. 15. Ord. ord. to s. c. con. to 18th. Filed Ord. authorizing Rec'r to borrow money & issue certificates &c.
Feb. 18. Ord. ord. to s. c. arg'd & sub'd, Briefs 5 x 10 x 5.
Feb. 20. Filed Brief of Petitioner Pidge.
Feb. 27. Filed Plffs. Brief on Petn.
Mar. 4. Ord. dem. to complt. of intervention con. to 11
Mar. 7. Filed Defts. Demurrer to Complt. of Intervener.
Mar. 11. Ord. dem. to compl. of intervention con. to 18th.
Mar. 12. Filed Reply Brief of Pidge.
Mar. 19. Filed Brief of Interveners on claim of Pidge.
Mar. 25. Ord. dem. to Complt. of Intervention submitted on Briefs 3 x 3 x 3.
Mar. 28. Filed Plffs. Brief on Dem. to Complt. of Intervention.

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Apr. 1. Ord. defts. dem. to Complt. of Intervention con. till after decision of Complts. dem. to Complt. of Int'n Ord. Reporter's fee of $10. be paid by Receiver.

Apr. 11. Filed Brief of Intervener on Dem.
June 24. Ord. claim of Pidge made preferred claim &c.
Aug. 6. Ord. dem. of plff. to complt. of Interveners sustained in part & overruled in part and ord. Interveners re-form complt. in accordance with decision.
Sept. 7. Filed Reformed Bill of Complt. of Intervener.
Nov. 20. Filed Affidavit for order direct'g delivery of tools.
Nov. 25. Ord. cause set for Dec. 18.
Nov. 26. Filed no. of setting cause for trial.
Dec. 10. Filed Petitions of Cowell, of Isaacs, of Griffin, of Grohe, of Lane; of Alloway; of Salisbury & Vickery; of Densmore; of Caldwell; of Williams; & of Blakeley for preference.
Dec. 11. Filed Substitution of Attys. for Complainant.
Dec. 13. Filed Ord. to show cause.
Dec. 16. Ord. ord. to show cause con. to 30th. Ord. Complt. have leave to file amended complt. & allowed to file dems. to.
Dec. 16. Re-formed Bill of Interveners & to Petitions of claimants for preference, except Pidge. Filed Substitution of Attys. for Complt. Filed Stip. allowing Amd. Complt. to be filed. Filed Amended Complt. of Complainant.
'64 Filed 12 Demurrers of Complt. to interventions of various claimants.
Dec. 17. Entered rule taking petition of Pidge *pro confesso* (Eq. Rule Bk. No. 3, p. 25).
Dec. 18. Ord. hearing *in re* preferred claims etc. con. indefly. on payment of $10. cost to claimant Pidge.
Dec. 30. Ord. ord. to s. c. & dems. to preferred claims set for Jan. 6, '96.

1896.

Jan. 6. Filed Stip. to Amd. complt.
Mar. 4. Filed notice of argument of Dem. etc., on Mar. 6.
Mar. 6. Ord. dems. to claims of Interveners argd. & subd. & cause set for hearing Mar. 13th.
Mar. 5. Ent'd Rule taking Am. Bill *pro confesso*. (Eq. R. B. 3, p. 35.)
Mar. 13. Ord. hearing con. to Mar. 27.
Mar. 27. Ord. con. to Apr. 3.
Apr. 7. Ord. con. to 21st.
May 1. Ord. con. to 5th.
May 8. Filed Notice of bondsman to be released from Receiver's bond.
May 18. Ord. mo. con. to 25th.
May 26. Ord. con. indefinitely. Filed application to file petn. of intervention.
June 12. Ord. mo. to file petn. granted. Filed Petition of Intervention of Buell & Co. *et al.*
June 23. Filed Receipt for copy Pet'n.

'65

July 3. Filed Complts. Answer to Petition of Interveners.
July 13. Filed Replication of Interveners.

Aug. 3. Ord. set for Sept. 2.
Aug. 14. Filed Report of Receiver & Motion for Order of Sale.
Aug. 24. Ord. mo. con. to Sept. 7th.
Sept. 21. Ord. con. & set head of Cal'r for 28th.
Sept. 28. Ord. ord. for Order of Sale con. to Oct. 5.
Oct. 12. Ord. con. to 26th.
Oct. 14. Filed Order to show cause. Filed Affidavit.
Nov. 9. Ord. mo. for ord. of sale & Ord. to s. c. con. to 16th.
Oct. 19. Filed Stipulation. Filed Order authorizing Receiver's Certificates to the amt. of $2,500.
Nov. 30. Filed Stip. as to Interveners.
Dec. 2. Filed Authorities for Buell & Co. *et al.* on Interveners. Con. for term. Contempt matters discharged. Mo. of Fox, Argued & submitted.
Dec. 5. Filed pts. of Complt.
Dec. 11. Filed petition of Thompson for Spl. performance.
Dec. 21. Ord. S. C. pet. of Thompson Contd. to 28th.
1897.
Jan. 4. Ord. Complt. dem. to petitions of preference overruled, 10 days to complt. to answer. Ord. ord. to s. c. on petn. of
166 Thompson argued & con. to 11th. Filed Order to Show cause. Filed Opinion. Filed Demurrer to pet'n of Thompson.
Jan. 11. Ord. ord. to s. c. con. to 25th.
Jan. 25. Ord. ord. to s. c. on & dem. to pet'n of Thompson con. to 28th.
Jan. 28. Filed Demurrer of Buell & Co. to pet'n. of Thompson. Ord. ord. to s. c. & dems. argued, petitioner all'd 5 days to amend pet'n & further hearing con. to Feb. 5th. Filed Brief of Receiver on order to s. c.
Feb'y 5. Ord. cont. ord. s. c. and demurrers, to 8th inst.
Feb'y 8. Ord. ord. s. c. etc. cont'd to 15th inst.
Feb'y 15. Ord. cont. ord. s. c. and demurrers to 19th inst.
Feb'y 18. Ord. ord. s. c. and dem'r of complt. & of Buell & Co. *et al.* to petition & amended pet. of Thompson argued & submitted with leave to file points. Filed amendments to petition of J. C. Thompson. Filed demurrer of complainant to amended pet. of J. C. Thompson.
Feb'y 23. Filed Brief of E. P. Cole on pet. of J. C. Thompson.
Feb'y 25. Filed petition of F. G. McClelland.
Feb'y 27. Filed dem'r of Complt. to petition of F. G. McClelland. Order setting aside submission of issues joined between Complt. & Buell *et al.*
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M'ch 2. Filed ord. extending time of complt. to ans'r petition of Alloway. Ord. setting case. Ord. dem'r cont'd to Apl. 5th. Ord. head of Cal. for 3d inst.
M'ch 4. Cause heard & submitted.
M'ch 15. Ord. sustain demurrers of Complt. and of P. A. Buell & Co. to petition of J. C. Thompson *et al.* for preference, 20 days allowed to amend petition. Opinion filed 24th.

M'ch 29. Filed stipulation relating to bonds etc.
Ap'l 3. Filed Stip. of facts *in re*. pet. of McClellan.
Ap'l 5. Ord. dem. to pet'n of McClellan con. to 12th. Ord. decree entered in favor of Buell & Co., Interveners. Filed Opinion on Interventions of Buell & Co. *et al.*
Ap'l 12. Ord. dem. con. May 3.
May 3. Ord. dem. to Petition of McClellan con. to June 7th.
May 25. Filed Order to show cause & to speed trial.
May 28. Filed Complts. Motion for final decree & order of sale. Filed Complts. Brief as to Bonds of Buell & Co.
May 29. Filed Stipulation of Facts on Cowell Petition & other pet'ns for preference. Filed Stip. as to facts between Plff. & E. Franklin *et al.* Interveners & defendant.
June 1. Ord. ord. to s. c. & mo. for decree con. to 24th.
June 24. Ord. ord. to s. c. con. to July 1st.
June 25. Filed Pet. of J. N. Castle.

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June 30. Filed Complts. Exceptions to Rec'r's Report.
July 1. Filed Demurrer & Answer of Receiver to Petition of Thompson. Filed Order to show cause on Petition of J. M. Castle. Filed Demurrer of Buell, pet'nr to Petition of Castle. Ordered motion of Complt. for final decree & order of sale; & Ord. to s. c. why Petition of Castle should not be granted; & Demurrer of Buell & Co., to said pet'n of Castle; and the Complt's. mo. to vacate the default entered by Pidge against it, heard and submitted. Filed Affidavit of Scrivner for Complt. on appl'n to vacate default on Pet'n of Pidge. Filed Complts. Ex. A. & Pidge's Exs. 1 & 2, on Hearing of mo. for decree. Filed Complts. Brief.
July 3. Filed Affidavit of E. P. Cole.
July 14. Filed Assignment by Receiver of moneys coming to him.
July 19. Filed Agreement in relation to assignments by Rec'r.
Aug. 9. Filed Opinion Ord. claims of Cowell, Alloway, *et al.*, Pidge, Buell & Co. *et al.* McClellan & Castle allowed, &c., & decree of foreclosure & sale be filed & entered. Ord. Rec'r allowed to file*d* reports. Filed Supp'l Report to July 31, '97. Ord. Reports of Receiver & except'ns

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thereto referred to Master in Chancery to report, &c. Ord. complt. allowed to withdraw Opinion. Filed Receipt for Opinion.
Aug. 10. Filed Report of Receiver. Ord. hearing of Application to fix compensation Counsel, &c. set for 18th inst.
Aug. 11. Filed Order in matter of Pet'n of J. N. Castle.
Aug. 18. Applications to fix compensation of Counsel & Receiver heard & submitted. Filed Claim of Complt. as Trustee.
Sept. 2. Filed Master's Report. Filed Testimony. Filed 5 Packages of Vouchers. Entered Notice of Filing of Master's Report (Eq. R. Bk. 3, p. 98).

Sept. 7. Filed Testimony on application to fix compensation of Counsel.
Sept. 13. Filed Report of Receiver for August, 1897.
Sept. 14. Filed Affidavit & Petition of Margaretha Meyer for permission to proceed with suit in State Court against plff. & respdts. Filed Order permitting Meyer to proceed with suit.
Sept. 16. Filed Application & Order for compromise of certain claims.
Sept. 18. Filed Findings of Fact. Filed & Entered Decree of Sale. (Eq. Dec. Reg. 5, p. 159, *et seq.*)

* * * * * * *

170 In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California. In Equity.

No. 11950.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
THE WOODBRIDGE CANAL AND IRRIGATION COMPANY (a Corporation), Defendant; J. C. THOMPSON, WILLIAM ALLOWAY ET AL., A. H. COWELL, F. FRANKLIN ET AL., WILLIAM C. PIDGE, BUELL & CO. ET AL., F. G. MCCLELLAND, I. N. CASTLE, Interveners.

Decree.

Decree of Foreclosure and Sale.

(Filed and Entered September 18, 1897.)

This cause having come on regularly in its order at this the July Term of the court, 1897, and it appearing to the Court that on the 3d day of October, 1894, the above-named complainant, The Atlantic Trust Company (a corporation), made and filed its bill of complaint in this court and cause against The Woodbridge Canal and Irrigation Company (also a corporation), defendant, for foreclosure of a certain mortgage or deed of trust in said bill of complaint referred to; that subpœna was duly issued and served
171 thereon and no answer made thereto, that on the said 3d day of October, 1894, under and by virtue of an order of this Court duly given, made and entered in said cause, E. C. Chapman, Esq., was appointed receiver of the property of said corporate defendant described in said mortgage, and duly qualified as such, and on the following day entered into the possession of said property, which has ever since remained and still is in *custodia legis* under the charge and care of said receiver; and it further appearing that afterwards an amended bill of complaint was filed by said complainant in said cause and duly served upon the said defendant, and that afterwards and on the 16th day of December, 1895, the said defendant being in default for not pleading to said amended bill, a rule was

entered taking such amended bill *pro confesso* as to said defendant; that subsequently bills of intervention were filed in said cause by the interveners J. C. Thompson, William Alloway *et al.*, A. M. Cowell, F. Franklin *et al.*, William C. Pidge, Buell & Co. *et. al.*, F. G. McClelland, and I. N. Castle, and the cause having been finally heard by the Court and submitted upon the said amended bill of plaintiff taken *pro confesso*, the said several bills of intervention, the evidence and proofs, oral and documentary, given in open court, and the several written stipulations or agreed statements of facts made and filed herein by the parties in interest by their respective solicitors and now remaining on file herein, the Court having duly considered the same; and also having considered the report
172 of the master settling the reports and accounts of the receiver filed in this cause; and having made and filed its findings of fact herein:

Now, therefore, in consideration of the law and the premises, and upon motion of Messrs. Scrivner & Schell and John B. Hall, solicitors for said trustee; plaintiff in this cause—

It is now here by the Court ordered, adjudged and decreed that at the time of the filing of the bill of complaint in this cause, the defendant Woodbridge Canal and Irrigation Company was in default in the payment of interest on all its outstanding bonds secured by said mortgage, or deed of trust, and that under and in pursuance of the terms of said bonds and mortgage, or deed of trust, the full amount of the principal of said outstanding bonds, with the interest thereon from March 1st, 1894, as represented by the interest coupons falling due September 1st, 1894, was then due and payable and unpaid, in gold coin of the United States, and that the same with the subsequently accruing interest thereon, still remains due and payable and unpaid, in such gold coin.

And it is further ordered, adjudged and decreed that the mortgage or deed of trust, exhibited with plaintiff's bill of complaint filed in this cause, to wit, that certain mortgage or deed of trust bearing date the 17th day of July, 1891, made and executed by the corporate defendant The Woodbridge Canal and Irrigation Company to the corporate plaintiff, The Atlantic Trust Company, to secure the payment of one hundred bonds issued by the said The Wood-
173 bridge Canal and Irrigation Company, bearing date on the same day, each in the sum of one thousand dollars, payable in gold coin of the United States on the first day of September, in the year 1901, at the office of said Atlantic Trust Company, with interest thereon at the rate of six per cent. per annum, payable semi-annually, upon presentation and surrender of the coupons annexed to said bonds, which said mortgage or deed of trust was afterwards and on the 10th day of August, 1891, duly recorded and is now of record in book "A" of Deeds, volume 74, page 361, in the office of the county recorder of the county of San Joaquin, in the State of California, is and constitutes a valid mortgage and lien upon all the property therein described and hereinafter particularly described, and upon all the franchises, rights, privileges, waters, water rights, dams, reservoirs, canals, ditches, flumes, waterworks and rights of way, and

upon all lands or interest in lands, and upon all personal property of every nature and kind, including credits, choses in action, bills receivable, securities, notes, bonds, mortgages, and claims for money due or to become due, owned or held by the said defendant, Woodbridge Canal and Irrigation Company at the date of said mortgage or deed of trust, or at any time since acquired by said defendant, as security for the payment of so many of the bonds mentioned in said mortgage or deed of trust as were lawfully issued and now remain outstanding and unpaid, together with the interest due upon said bonds and remaining unpaid, and as security for the payment of the cost and expenses of administering the trust created by said
174 mortgage or deed of trust, and of all cost and expenses of foreclosing the same, including the cost and expenses of the management and care of said property *pendente lite*, the whole being payable in gold coin of the United States, according to the terms and conditions of said mortgage or deed of trust.

And it is further ordered, adjudged and decreed that there is now due and owing and unpaid, for and on account of the cost and expenses of the foreclosure of said mortgage or deed of trust and the management and care of the property pending this action, plaintiff's costs and expenses of suit, taxes at the sum of $———, also—

(*a*) To E. C. Chapman, Esq., receiver appointed by this Court, for and on account of advances made by him in the administration, care and management of the property covered by said mortgage or deed of trust and placed in his care and management pending this suit, the sum of $6,605.72, less $3,500.00 now here paid thereon.

(*b*) Also the following named sums, being the amount due as of this date upon receiver's certificates duly issued by said receiver under authority of the Court, with interest upon the principal sum named in each of said certificates from this date until paid, at the rate of ten per cent. per annum, to wit:

To Whom Issued.	Date.	Principal.	Total.
B. G. Lathrop	April 2, 1895	$500.00	$622.36
B. G. Lathrop	May 4, 1895	100.00	124.42
E. B. Harris	May 16, 1895	500.00	616.25
B. G. Lathrop	June 4, 1895	100.00	122.75
175			
B. G. Lathrop	July 4, 1895	100.00	121.92
B. G. Lathrop	Aug. 4, 1895	100.00	121.09
J. U. Castle	Sept. 2, 1895	150.00	180.45
C. Swain	Sept. 2, 1895	150.00	180.45
E. Fisk	Sept. 2, 1895	150.00	180.45
B. G. Lathrop	Sept. 4, 1895	100.00	120.31
E. B. Harris	Oct. 4, 1895	100.00	119.42
E. B. Harris	Nov. 4, 1895	100.00	118.55
E. B. Harris	Dec. 4, 1895	100.00	117.75
E. B. Harris	Jan. 4, 1896	100.00	116.92
Frank Davis	Jan. 14, 1896	2,000.00	2,332.44
Frank Davis	Jan. 14, 1896	467.30	540.80

Frank Davis	Jan. 31, 1896.....	681.85	792.28
Frank Davis	Feb. 1, 1896.....	950.00	1,093.85
Frank Davis	Feb. 1, 1896.....	456.00	530.34
J. J. Hinckley	Feb. 1, 1896.....	860.00	999.28
Fox & Reser	Nov. 27, 1896.....	2,500.00	2,699.30

(c) Also the following named sums to the persons therein named or to their assignees upon time checks issued by the said receiver for and on account of expenses incurred by him during his administration, to wit:

To Whom.	Date.	Amount.
Henry Pixley,	Nov. 10, '94.....	$75.00
H. Mannion,	Nov. 15, '94.....	150.00
Henry Pixley,	Dec. 10, '94.....	75.00
H. Mannion,	Dec. 15, '94.....	150.00
Henry Pixley,	Jan. 10, '95.....	75.00
H. Mannion,	Jan. 15, '95.....	150.00
176 N. I. Baldwin,	Mar., '95.....	80.00
O. Atwood,	May, '95.....	339.00
J. E. Bray,	June, '95.....	198.80
J. E. Bray,	June 26, '95.....	16.20
J. E. Bray,	June 29, '95.....	5.00
F. M. Lindaugh,	July 1, '95.....	446.00
F. M. Lindaugh,	July '95.....	195.00
N. I. Baldwin,	Aug. 1, '95.....	100.00
Wm. Alloway,	Sept. 18, '95.....	66.50
John Lane,	Sept. 23, '95.....	34.15
Theo. Caldwell,	Sept. 23, '95.....	10.50
Geo. Faass,	Sept. 23, '95.....	108.50
B. Landaeh,	Sept. 23, '95.....	30.00
B. F. Rutledge,	Sept. 23, '95.....	52.75
F. H. McClelland,	Sept. 23, '95.....	36.50
Theo. Caldwell,	Sept. 23, '95.....	24.00
A. H. Cowell,	Sept. 23, '95.....	20.90
John Kellar,	Oct. 18, '95.....	18.01
Boyce Bros.,	Oct. 18, '95.....	45.08
N. I. Baldwin,	Oct. 31, '95.....	24.86
F. G. McClelland,	Nov. 1, '95.....	125.15
D. Kelley,	Nov. '95.....	249.85
M. A. Davis,	Nov. '95.....	24.80
J. Ridley,	Nov., '95.....	14.00
C. P. Mosher,	Nov. 30, '95.....	5.50
James Griffin,	Nov., '95.....	38.00
B. F. Rutledge,	Dec. 16, '95.....	126.75
Chas. Rutledge,	Dec. 16, '95.....	82.00
G. D. McClelland,	Dec. 16, '95.....	211.50
N. Culp,	Dec. 16, '95.....	15.00
177 R. W. Sawens,	Dec. 16, '95.....	43.50
F. M. Lindaugh,	Dec. 16, '95.....	29.00
H. McClelland,	Dec. 16, '95.....	34.50

F. G. McClelland, Jan. 17, '96	27.00
P. A. Buell & Co., Feb. '96, Cert. of indebtedness for material	987.89
Fred Grobe, June 23, '96	89.60
J. E. Bray, July 6, '96	12.30
N. I. Baldwin, Feb. 1, '97	300.00
F. G. McClelland, Feb. 1, '97	300.00
N. I. Baldwin, Mar. 8, '97	25.00
G. D. McClelland, May 26, '97, 27 days at 2	54.00
H. Johnson, May 26, '97, 25 days at 2	50.00
D. Johnson, May 26, '97, 25 days at 2	50.00
Geo. Rutledge, May 26, '97, 26 days at 2	52.00
A. A. McClelland, May 26, '97, 2½ days at 1	2.50
Baldwin Account, Time Checks issues since June 1st, '97	133.30
Geo. D. McClelland	32.00
Geo. Rutledge	28.00
H. Johnson	28.00
D. Johnson	28.00

(*d*) Also the following named sums to the persons named or their assignees for and on account of work done and material and board furnished for men, the same having been performed and furnished for the said receiver and for which no time checks or certificates have been issued, to wit:

To J. J. Hinckley		$1,545.50
	To Baldwin & McClelland	143.00
178	To N. I. Baldwin	200.00
	To F. G. McClelland	300.00
To John J. Torry, Jr.		42.00
To Fox & Gray for costs advanced		39.35
Making total of		$2,269.85

And it is further ordered, adjudged and decreed that there be allowed and paid out of the proceeds of the sale hereinafter ordered, as and for the further costs and expenses of this suit and of the care and management of the property *pendente lite*, the following sums, to wit:

(*e*) To E. C. Chapman, Esq., receiver, as and for his compensation for his services as such receiver from the date of his appointment to the 1st day of October, 1897, the sum of $9,000.00.

(*f*) To Messrs. Fox & Gray, as and for their compensation as counsel for said receiver, the sum of $9,000.00.

And it is further ordered, adjudged and decreed that next after the payment of the sums hereinbefore mentioned and before the payment of any sum for or on account of the principal or interest of any of the bonds so issued as aforesaid and hereinafter mentioned, that there be allowed and paid out of the proceeds of said sale as and for claims accrued against the defendant Woodbridge Canal and Irrigation Company between November 3d, 1893, and October 3d,

1894, for expenses of operating the canal system and necessary for keeping the same a going concern, and now here adjudged
179 and decreed to be a prior lien upon said property, the following sums, to wit:

(*g*)

N. I. Baldwin	$517.40
Bert L. Bray, laborer and ditch-tender	58.60
J. E. Bray, ditch-tender	158.73
H. J. Hudson, laborer and ditch-tender	286.00
Ernest Lane, laborer	45.60
B. Lambach, laborer	68.35
Floyd Nain, ditch-tender	135.50
P. Mortinson, ditch-tender	198.00
F. C. McClelland, superintendent	392.00
M. Nolan, laborer and repairer	40.00
W. C. Pidge, surveying	50.00
R. Salisbury, B. M.	
Vickory, Salisbury & Vickory, Carpenters	350.00
Ah Young and Ah Hong, repairs	141.75
H. E. Salisbury, ditch-tender	90.00
Geo. Rochette, repairs	8.00
H. E. Welch, repairs	12.75
Theo. Caldwell, ditch-tender	194.40
Wm. Alloway, laborer	306.00
John Lane, laborer	178.35
Fred Grohe, laborer	307.50
Jas. A. Griffin, ditch-tender	278.00
Geo. Fause, laborer	279.05
Jas. Blakeley, ditch-tender	276.00
N. Densmore, ditch-tender	108.40
A. H. Cowell, supplies	190.40
180 H. Thompson, supplies	496.21
John Torry, Jr., services as bookkeeper	571.55

(*h*) To W. C. Pidge for services rendered between October 13th, 1893, and October 1st, 1894, as civil engineer, and adjudged to be a prior lien upon said property, the sum of $1,801.37.

(*i*) To F. C. McClelland on behalf of himself and as assignee of others, as set forth in his petition filed in this cause for services rendered in keeping the canals in a proper state of repair, the sum of $922.12.

(*j*) And it is further ordered, adjudged and decreed that next after the payment of the sums hereinbefore mentioned there be paid to Messrs. Scrivner & Schell and John B. Hall, solicitors for plaintiff in said cause, the sum of $9,000.00.

(*k*) To E. P. Cole and ——, solicitors on behalf of Buell & Co. and other interveners, holders of twenty-six of the bonds so issued as aforesaid, the sum of $2,000.00.

And it is further ordered, adjudged and decreed that after the payment of the several sums hereinbefore mentioned, and not be-

fore, there be allowed and paid to the owners and holders of each of the several bonds hereinafter mentioned, upon the surrender thereof with the relative coupons attached, the sum of $1,210, on each of said bonds, with interest on the sum of one thousand dollars of the moneys so due upon each of said bonds from the 1st day of September, 1897, to the date of payment, at the rate of six per cent. per annum, if the proceeds of said sale after the payment of
181 the costs of sale and of the costs of suit and of the several sums mentioned in subdivisions "(*a*)" to and including subdivision "(*k*)" shall be sufficient to pay, in full, the ninety-four (94) bonds now here presented, otherwise that each of the seventy-nine bonds mentioned in this paragraph of this decree be paid pro rata in the proportion that the amount herein allowed upon each of said bonds bears to the whole amount of the fund so applicable to the payment thereof; said seventy-nine bonds being those made and executed by the defendant, Woodbridge Canal and Irrigation Company, bearing date the 17th day of July, 1891, for the sum of $1,000 each, with interest thereon at the rate of six per cent. per annum, payable semi-annually, and having relative coupons attached therefor and being those known, numbered and designated as follows:

One (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46), forty-seven (47), forty-eight (48), forty-nine (49), fifty (50), fifty-seven (57), fifty-eight (58), fifty-nine (59),
182 sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), sixty-six (66), seventy-six (76), seventy-seven (77), seventy-eight (78), seventy-nine (79), eighty (80), and eighty-four (84), seventy-four (74), seventy (70), seventy-one (71), seventy-two (72), seventy-three (73), eighty-six (86), eighty-seven (87), eighty-eight (88), eighty-nine (89), ninety (90), ninety-three (93), ninety-four (94) and ninety-five (95).

And it is further ordered, adjudged and decreed that out of the proceeds of the sale hereinafter ordered to be made upon surrender of the respective bonds hereinafter mentioned with the relative coupons attached (said bonds being of the same issue and date as those mentioned in the preceding paragraph of this decree) there be paid to the holders and claimants thereof respectively, the sums hereinafter respectively mentioned if the proceeds of said sale, after the payment of the costs of sale and costs of suit, and the payment in full of the claims hereinbefore mentioned in paragraphs "(*a*)" to "(*k*)," inclusive, are sufficient to pay the bonds mentioned in the preceding paragraph of this decree and the sums mentioned in this paragraph of this decree and the sums mentioned in this paragraph

in full, otherwise that the same be paid pro rata in the proportion that the total amount due upon the bonds mentioned in the preceding paragraph plus the total amount authorized to be paid in this paragraph of this decree bears to the total amount of the fund applicable to the payment thereof, to wit:

183 To Eaton, Newell & Buckley, upon the surrender of bond No. sixty-seven (67) with the relative coupons attached, the sum of $1,210.00, plus interest upon $1,000 thereof from the first day of September, 1897, to date of payment at the rate of six per cent. per annum.

To Louis Epstein & Co., upon the surrender of bond No. eighty-three (83) with the relative coupons attached, the sum of $1,210, plus interest upon $1,000.00 thereof from the 1st day of September, 1897, to the date of payment at the rate of six per cent. per annum.

To the Fresno National Bank upon the surrender of bond No. sixty-nine (69) the sum of $715.87.

To the Stockton Lumber Company upon the surrender of bonds numbered fifty-one (51) and fifty-two (52) with the relative coupons attached, the sum of $1,200.00, with interest upon $1,000 thereof from the 1st day of September, 1897, to the date of payment, at the rate of six per cent. per annum.

To the Bank of Central California upon the surrender of bonds numbered seventy-five (75) and eighty-one (81) with the relative coupons attached, the sum of $2,420.00, with interest upon $2,000 thereof from the 1st day of September, 1897, to the date of payment, at the rate of six per cent. per annum.

To the Bank of Central California upon the surrender of bonds numbered ninety-six, ninety-eight and ninety-nine with the relative coupons attached, the sum of $3,630, with interest upon $3,000.00 thereof from the 1st day of September, 1897, to the date of payment at the rate of six per cent. per annum.

184 To J. J. Swain upon the surrender of bond No. fifty-three (53) the sum of $822.24.

To H. Bentley upon the surrender of bond No. sixty-eight (68) with the relative coupons attached, the sum of $747.60.

To H. Bentley upon the surrender of bond No. ninety-two (92) with the relative coupon attached, the sum of $763.26.

To Francis Cogswell upon the surrender of bond No. eighty-two (82) with the relative coupons attached, the sum of $1,210.00, with interest upon $1,000 thereof from September 1st, 1897, to the date of payment, at the rate of six per cent. per annum.

And it is further ordered, adjudged and decreed that the intervener, J. C. Thompson, take nothing by his bill of intervention filed herein and that the same be dismissed.

And it is further ordered, adjudged and decreed that the interveners, William Alloway, Salisbury & Vickory, John Lane, Fred Grohe, Theo. Caldwell, N. Densmore, James A. Griffin, George Faas, W. H. Williams, James Blakely, E. Franklin, Samuel Estees, Edgar Wyatt, Joseph J. Hinckley, H. H. Saunders, and J. N. Hinckley and A. H. Cowell (for himself and as assignee for many others in

his petition named), and each of them, except so far as is hereinbefore adjudged and determined, are not entitled to priority over the said outstanding bonds, and that except as far as is herein already provided their respective claims be, and they are hereby denied and their several petitions dismissed.

185 And it is further ordered, adjudged and decreed that the petition of E. Franklin, Samuel Estees, Edgar Bryant, Joseph J. Hinckley, H. H. Saunders and J. N. Hinckley, praying for judgment of lien under the Mechanics' Lien Law of the State of California, prior in time to the lien of said mortgage, for services rendered by said interveners, be and the same is hereby dismissed.

And it is further ordered, adjudged and decreed that all of the said ninety-four bonds hereinbefore specifically mentioned and described, were legally and lawfully issued and the same are now outstanding and unpaid and the amount of money now due for principal and interest upon said bonds is the sum of $112,530, as of the 1st day of September, A. D. 1897, all of which is payable in gold coin of the United States and secured to be paid by the mortgage or deed of trust aforesaid, and that the complainant is entitled to a decree of foreclosure and order of sale of the mortgaged estate and property for the moneys so due as aforesaid and the other moneys so due as aforesaid hereinbefore mentioned.

Wherefore and on the motion of said Scrivner & Schell and John B. Hall, Esq., solicitors for said complainant, it is by the Court now here further ordered, adjudged and decreed that the mortgage or deed of trust hereinbefore referred to be and the same is hereby forever foreclosed, and that all and singular the property of every nature and kind, real, personal and mixed, therein described and every part thereof, and every interest of the defendant therein, and all and singular the franchises, rights, privileges, rights of

186 way or of flowage, lands, tenements, with the appurtenances thereunto belonging, waters, water privileges, water rights, lakes, dams, reservoirs, canals, ditches, conduits, with rights of way therefor, and all other appurtenances thereto belonging, together with all and singular the personal property of every nature and kind, including office furniture and fixtures, tools, implements, machinery, wagons, buggies, harness, lumber and livestock, notes, bonds, securities, credits, book accounts, claims and demands for moneys due or to become due, and all other properties and rights owned or held by the defendant Woodbridge Canal and Irrigation Company on the seventeenth day of July, 1891, or at any time since then acquired by said defendant and now remaining, be sold according to law and the rules and practice of this Court, in one parcel and not separately, but as an entirety, to the highest and best bidder, for gold coin of the United States, and the proceeds of such sale be applied, after confirmation of sale, to the payment and satisfaction of the costs of sale, costs of suit, and of the several sums of money in this decree hereinbefore mentioned and made payable, and in the order of priority hereinbefore mentioned and not otherwise, and that the residue of said proceeds, if any there be, be brought into

Court to be disposed of as the Court shall direct; that upon the making and final confirmation of said sale, the defendant, Woodbridge Canal and Irrigation Company, and all and each of the said petitioning interveners, and all persons claiming or to claim under them or either of them, and all persons having liens
187 subsequent to said mortgage under the real estate described in said mortgage, and their personal representatives and all persons having liens or claims by or under such subsequent liens and their heirs or personal representatives, and all persons claiming under them, all persons claiming to have acquired any estate or interest in said premises subsequent to the commencement of this suit, be forever barred and foreclosed of and from all equity of redemption, and claims of, in or to said mortgaged premises, and every part and parcel thereof from and after the delivery of the deed thereafter executed under the order of this Court; such sale shall be made at public auction, by the commissioner hereinafter appointed for that purpose, at the city of San Francisco, in the Northern District of California, at a place in said city and on a day to be named by such commissioner, and at an hour to be named by him, between the hours of ten o'clock A. M. and three o'clock P. M., and after not less than twenty days' public notice thereof and of the time and place thereof, by publication daily in one newspaper of general circulation printed and published in the city of San Francisco, and one newspaper of general circulation printed and published in the city of Stockton, both in said Northern District of California, or if for any cause the same shall not then be made, then on some subsequent day to which the same may be adjourned by said commissioner, and of which public notice shall be given; at such sale no bid shall be accepted for a less sum than one hundred and twenty thousand dollars and before any bid is finally
188 accepted and the property struck off, the bidder shall be required to deposit with the commissioner on account thereof, gold coin of the United States, to the full amount required to pay the costs of sale, costs of suit, and all sums required for any of the purposes of payment under this decree, other than that of payment on account of the bonds herein mentioned, the same to be by the said commissioner deposited in court, with his report of sale, and the balance of the amount of the accepted bid to be paid into court at or before the hearing upon the question of confirmation of sale, in like gold coin of the United States, provided, however, that for any balance of said bid over and above the total amount of the costs of suit and of sale including counsel fees, trustees' commissions, balance due the receiver for advances and for compensation for his services, amounts due on receiver's certificates and outstanding checks, and the amount due for work and labor done and board and material furnished for the receiver, not represented by his certificates or time checks, the amount herein allowed to receiver's counsel, and all other preferential claims herein allowed, the excess may be paid and satisfied by and with the outstanding mortgage bonds hereinbefore mentioned with the matured and unpaid coupons thereon,

the same to be received in payment to the extent aforesaid, according to their value to be ascertained and determined by the net amount of the proceeds arising from such sale and applicable to payment on account of such bonds; said sale shall be made subject to confirmation by the Court, and within twenty days after such
189 sale the commissioner must file with the clerk of this court a verified report and account of the sale, together with proper affidavits showing that the regular and required notice of the time and place of sale was given; and upon confirmation of such sale by the Court, the commissioner must make, execute and deliver to the purchaser the necessary and proper certificate of sale of property other than choses in action and securities, and of choses in action and securities, necessary and proper assignments and other instruments of transfer and conveyance either of the parties, complainant and defendant, and any intervener or bondholder or any other person may become a purchaser at the sale hereby ordered; and permitted to pay for the said property upon the terms and in the manner and form hereinbefore prescribed and required. Six months after confirmation of sale, if no redemption thereof has been made, the commissioner shall make, execute and deliver the property and necessary deeds of conveyance of the property so sold as aforesaid. Upon confirmation of the sale the purchaser or purchasers of said mortgaged premises and property shall be let into possession thereof, and any of the parties to this action who may be in possession of said premises or property or any part thereof, and any person, who, since the commencement of this action, had come into possession under them or either of them, shall deliver possession thereof to such purchaser or purchasers, on production of the certificate of sale therefor, or of any order of this Court for the delivery of such possession.

190 E. H. Heacock, Esq., Master in Chancery, is hereby appointed commissioner to make such sale and report, and to make, execute and deliver the necessary and proper certificates of sale, conveyances and assignments thereunder after confirmation as aforesaid. Before entering upon his duties, he must be sworn to perform them faithfully and must execute an undertaking with sufficient sureties to be approved by the Court, in the sum of five hundred dollars, lawful money of the United States of America, to the effect that he will faithfully discharge the duties of such commissioner according to law. He shall receive as compensation for his services as such commissioner the sum of five hundred dollars, and no more.

The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, as far as the same can be ascertained from the mortgage above referred to (of date July 17, 1891), or from the complaint filed and evidence given in this action, are as follows, to wit:

The entire corporate property of said Woodbridge Canal and Irrigation Company and all its lands, tenements, hereditaments, privileges, franchises, rights of way, flowage and riparian rights, ease-

ments, and fixtures, owned by said canal company at the date of said mortgage or thereafter acquired by said Company, and all its canals, flumes, headworks, gates, dams, bridges, etc., that (at said date) constructed or which has since been constructed by said Company extending from the present point of diversion in
191 the Mokelumne river, in the town of Woodbridge, in San Joaquin county, aforesaid, in a westerly direction of Taison and New Hope, in said county, and in an easterly and southerly direction to the Calaveras river, with all other or branch canals that said company has, at any time constructed within said territory, south and west of the Mokelumne river, and all the estate, right, title, and interest, claims and demands, rights of way, and other easements, whether at law or in equity, of the said company of, in and to the same, and each and every part and parcel thereof, and all buildings, fixtures and personal property thereon, or belonging to said company, and all receipts, incomes and profits derivable from any contracts or agreements for the transfer of water rights as appurtenant to specified lands, and to which receipts, incomes and profits the said canal company is or may become entitled.

The following schedules contain a more particular description of the property subject to this decree:

SCHEDULE "A."

1 safe, 2 desks, 2 wood chairs, 1 office stove, 6 links stove pipe, 1 letter press, 1 large map showing system of canals, 1 box of old drawings of civil engineers, 1 spirit level, 1 set double harness (except collars, reins, and bridle, which were stolen), 1 set single harness, 1 horse, 1 road wagon, 3 large cross-cut saws, 1 surveyor's table, 4 hand pumps, 1 fifth chain, 2 iron pails, 1 keg of 8d. nails, 2
192 large monkey-wrenches, 250 machine bolts, ⅝ x 7, 10 ft. of 2 in. old rope, 176 ft. of 1¼ in. old rope, 108 ft. of 1½ in. old rope, 50 ft. of 2 in. new rope, 2 small rollers, 2 large double blocks, 1 small double block, 1 large ripple block, 43 drift bolts, 2 ft. long x ⅝ in., 2 nail sets, 2 crow-bars (small), 1 iron dog 2 ft. x 1 in., 1 iron bar for raising outlet gates, 1 auger, 14 bolts, 1 ft. x ⅝ in., 3 gopher traps, 4 iron eyes for a four horse scraper, 4 bolts, 2 ft. x ¾ in., 1 bolt 2 ft. x 1 in., 23 long-handled shovels, 6 picks, 1 four tined fork, 3 hatches, 2 hooks for raising check boards 4 ft. by 1 in., 2 1-gallon coal-oil cans, 4½ kegs 10d nails, ½ roll barbed wire, 2 round pile rings, 2 square file rings, 2 cant hooks, 6 ft. 1-inch gas-pipe, 2 scythes, 2 axes with handles, 2 axes without handles, 1 large auger for boring post holes, 40 rods ¾ inch x 8 ft., 6 iron screws for head gates, 1 spade, 3 mattocks, two (2) short handle shovels, 3 crow-bars (large) 1 bar for drawing nails, 1 grind stone, 1 ladder, 1 work-bench, two four-horse scrapers, complete, 2 four-horse scrapers, out of repair, 2 old tool chests, 1 sled, ¼ ton hay, 3 sacks barley, 25 trestles, 1 plow, 20 wheel-barrows, 1 gate lift for dam gates, 2 small single blocks, 1 large iron hook 4 ft. x ⅞ in., 1 grappling-hook, 1 stove shovel, 1 piece of chain, 1 pile driver, 24 ft. high, 1 lot old lumber about 3,000 ft. pine, 1 ink-stand.

SCHEDULE "B."

Those certain promissory notes payable to the Woodbridge Canal and Irrigation Company and described as follows, to wit:

193 Note of A. M. Harshner, dated November 21, 1892, for $400.00.

Note of R. J. and S. A. Parsons, dated January 31, 1893, for $1,600.00.

Note of Helen Weber, C. M. Weber and Julia H. Weber, dated May 28, 1894, for $1,963.00.

Note of H. C. Herson, dated May 28th, 1894, for $1,834.25.

Note of Mrs. M. A. Shinn for $425.00.

Note of F. T. Cowan, dated May 28th, 1894, for $648.00.

Note of A. M. Harshner, dated —— 28th, 1894, for $400.00.

Note of T. E. Jones, dated June 25th, 1894, for $896.37.

Amounts of money due and unpaid September 1, 1898, for interest upon mortgages held by the company and for water supplies:

William Langherst		$48.50
Mrs. C. Gerard		68.88
David Housh		30.00
Henry Beckman		394.18
Ezra Fiske		124.97
Mary and H. C. Beckman		238.70
L. M. Morse and J. LeRoy White		212.73
C. M. and Julia Weber		752.82
Sidney Newell		216.24
E. M. Carr, R. E. Wilhoit, and H. K. Goodwin		280.11
A. M. Harshner and H. Barnhart (Mtg. $400 due)		606.10
	C. C. Franklin	30.00
194	Mrs. E. Franklin	90.00
	R. J. and S. A. Parsons	457.00
Balfour, Guthrie & Co.		228.95
Harvey Hersom		155.13
Thomas Jones (Mtg. due)		896.37

SCHEDULE "C."

(*a*) An irrigating canal, in the county of San Joaquin, State of California, beginning at a dam in the Mokelumne river, in the town of Woodbridge, in the southeast quarter (¼) of section thirty-four (34) in township four (4) north of range six (6) east, Mount Diablo base and meridian, and running thence through said section thirty-four (34) and through and across portions of sections three (3), and ten (10), eleven (11), fourteen (14), twenty-three (23), twenty-six (26), thirty-five (35) and thirty-six (36) in township three (3) north of range six (6) east, and through and across portions of sections one (1), twelve (12) and thirteen (13), in township two (2) north of range six (6) and also through and across section eighteen (18) in township two (2) north of range seven (7) east, and fol-

lowing the line of division between subdivisions fifty-one (51) and sixty-one (61) Rancho del Campos de los Franceses.

Those certain irrigation canals situated and being in the county of San Joaquin, State of California, in township four (4) north of ranges five, six and seven (5, 6 and 7) east, and being known and described as follows, to wit:

195 That certain dam built and constructed in and across from either bank of the Mokelumne river, in section 34, township 4, north of range 6 east.

*Franklin Canal, 601 miles.
Main Canal, East Branch, 9,280 miles.
East Branch, excavation, No. 2, 4,840 miles.
Davis Branch, 2,408 miles.
North Branch, 2,043 miles.
Spanker Ditch, 1,505 miles.
West Branch Canal, 4,570 miles.
Carr Ditch, 410 miles.
Swain Lateral, 495 miles.
Weber Lateral, 264 miles.
Castle Lateral, 653 miles.
Harshner Canal, 1,070 miles.
Parsons Canal, 500 miles.

The above canals, ditches and laterals, being part of the system located at its point of beginning, at the dam in Mokelumne river at the town of Woodbridge, in the east half of section thirty-four (34) township four north of range 6 east.

(*b*) Certain riparian rights along said Mokelumne river, above and below the dam of the company at said Woodbridge acquired by the company from the persons and at the times, respectively, below specified, to wit:

A right granted to the Woodbridge Canal and Irrigation Company to appropriate to the use of said corporation 450,000 cubic inches of water per second under four-inch pressure, by agreements

196 made, executed and delivered to said company, and which agreements are recorded in the office of the county recorder of the county of San Joaquin, as follows, to wit:

1. An agreement executed by H. D. Shinn, Mrs. R. O. Snediger and D. J. Shinn, recorded in book "G," vol. 10, Miscellaneous, page 232.

2. An agreement executed by William Dames, recorded in book "G," vol. 10, page 233, Miscellaneous.

3. An agreement executed by Sidney Newell, recorded in book "G," vol. 10, page 345, Miscellaneous.

4. An agreement executed by G. H. Barber, recorded in book "G," vol. 10, page 238, Miscellaneous.

5. An agreement executed by W. W. Fogg and Fogg & Pratt, recorded in book "G," vol. 10, page 239, Miscellaneous.

6. An agreement executed by Charles I. Boyce, recorded in Book "G," vol. 5, page 225, Miscellaneous.

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*[These figures are apparently wrong, but they are as certified—The CLERK.]

7. An agreement executed by John Jackson, recorded in book "G," vol. 5, page 226, Miscellaneous.

8. An agreement executed by John Boyce and Amos Boyce, recorded in book "G," vol. 5, page 227, Miscellaneous.

9. An agreement executed by David T. Ray, recorded in book "G," vol. 10, page 228, Miscellaneous.

10. An agreement executed by Henry Koontz, recorded in book "G," vol. 10, page 230, Miscellaneous.

11. An agreement executed by Henry Koontz, recorded in book "G," vol. 10, page 231, Miscellaneous.

12. An agreement executed by Henry Prouty, recorded in book "G," vol. 10, page 236, Miscellaneous.

197 13. An agreement executed by George Housken, recorded in book "G," vol. 10, page 240, Miscellaneous.

14. An agreement executed by James G. Nolan, recorded in book "G," vol. 10, page 234, Miscellaneous.

15. An agreement executed by John McFarland, recorded in book "G," vol. 10, page 235, Miscellaneous.

16. An agreement executed by Maria A. Card, recorded in book "G," vol. 5, page 224, Miscellaneous.

17. An agreement executed by T. R. Burkett, recorded in book "G," vol. 10, page 223, Miscellaneous.

18. An agreement executed by Mary A. Folger, M. Augusta Folger, M. E. Folger and John C. Thompson, unrecorded.

19. An agreement executed by R. W. Williams, unrecorded.

(*c*) Certain rights of way lying and being within this said township 5 north, of ranges 5, 6, and 7 east, and township 4 north of ranges 5 and 6 east, numbering —— in all, and having an aggregate acreage of 330.48 acres, which rights of way are below particularly described by reference to the grants thereof.

(*d*) Certain contracts from the owners of land lying above said dam granting permission to said Woodbridge Canal and Irrigation Company, as assignees, to construct, maintain, etc., said dam in said river, to wit:

(*e*) Certain parcels of real property, situate and being in said county of San Joaquin and bounded and particularly described as follows:

(1) Being (1) small piece of land adjoining block 2 in the
198 town of Woodbridge, known as the "Mill property," being the land on which was erected the old flour-mill and building heretofore sold to C. C. Blair and further described as lots 4, 5, and 6 in block "F" of Woods' survey of the town.

(2) 13.28 acres of land, situate, lying and being in said San Joaquin county, on the north bank of Mokelumne river immediately opposite said town of Woodbridge and immediately adjoining the said dam of the said Woodbridge Canal and Irrigation Company, and known as and called the "Cowboy Tract."

(3) Certain lands along the north side of river adjoining the dams and works of said Company at Woodbridge, and lying on the north side of said Mokelumne river—comprising in all 96.95 acres, and known as the "Journey Purchase."

(4) Those certain bottom lands situate in said county of San Joaquin, and described as fractions Nos. 1 and 2 and the east half of the southwest quarter of section 32, township 4 north, of range 7 east, M. D. B. & M.

(*f*) Those three certain water rights and locations on the Mokelumne river, at said Woodbridge, notices of which said locations were posted by Bryon D. Beckwith on the bank of said river on the 22d, 23d and 30th days of December, 1898, respectively, and filed in the office of the county recorder of San Joaquin County aforesaid, on the 31st day of December, 1896.

(*g*) Those three certain water locations and claims to water flowing in the Mokelumne river particularly described as follows, to wit:

199 1. A claim to said water to the extent of 250,000 cubic inches per second at the point of the north bank of the said river at 250 feet above and to the opposite side of where Green's mill formerly stood in the town of Woodbridge—notice of which bearing date the 19th day of May, 1890, and recorded May 20th, 1890, in book "G," volume 8, page 251, Miscellaneous Records of San Joaquin County, in the office of the county recorder of said county.

2. A claim by one H. B. Perkins to said water to the extent of 345,600 inches at the point where notice in writing was duly posted, that point being a pine tree on the south bank of said river near a suspended water-pi*p*e which leads across said river. Said notice bearing date November 6, 1890, recorded November 30, 1890, in book "L" of Mining Claims, pages 544 and 545, in the office of the county recorder of Calaveras County.

3. A claim to said water to the extent of 400 cubic feet per second at the point where notice was duly posted in writing by Byron D. Beckwith, that point being on the north bank of the Mokelumne river, on a live-oak tree about 300 feet north of a suspension pipe across said river; said notice being dated January 23d, 1892, and recorded January 26, 1892, in book "A" of Water Rights, page 186, in the office of the county recorder of Amador County.

(*h*) All those certain pieces and parcels of land being in the counties of Calaveras and Amador, and bounded and particularly described as follows, to wit:

200 The fractional southeast quarter of the southeast quarter of section 33, and fractional northwest quarter of the southwest quarter of section 34, township 5 north of range 10 east M. D. B. and M., more particularly described in that deed made by Byron D. Beckwith to the Woodbridge Canal and Irrigation Company on the 8th day of February, A. D. 1894, and recorded on the 27th day of June, 1894, in book "A," volume 83, page 78 of Deeds, San Joaquin County records, and recorded in volume 10 of Deeds, at page 269 of the records of Amador County.

The said parcels of land containing in all 46.61 acres.

(*i*) All that certain right of way across a strip of land granted by J. J. Hinckley and wife to the Woodbridge Canal and Irrigation Company, along and over certain lands of said Hinckley from the county road to the land acquired by said Woodbridge Canal and

Irrigation Company on the 8th day of February, 1894, from Byron D. Beckwith hereinbefore in this schedule mentioned.

The following is a list of the rights of way referred to in paragraph (*e*) page 19 of this decree:

1. A right of way 100 feet wide, as described in a deed from Sidney Newell to the Woodbridge Canal and Irrigation Company, dated March 21st, 1892, recorded in book "A," vol. 58 of Deeds (Highways), page 207, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

2. A right of way 100 feet wide, as described in a deed from Robert Boyce, Amos Boyce and John Boyce to the Wood-
201 bridge Canal and Irrigation Company, dated April 4th, 1890, and recorded in book "A," vol. 58 of Deeds, at page 110, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

3. A right of way 100 feet wide, as described in a deed from Susan A. Deady and Susan A. Deady, as guardian of the person and estate of John Deady, an incompetent person, to the Woodbridge Canal and Irrigation Company, dated June 23d, 1890, and recorded in book "A," vol. 58 of Deeds, page 136, records of San Joaquin County, to which deed and the record thereof, reference is hereby made for more particular description.

4. A right of way 100 feet wide, as described in a deed from R. J. Parsons to the Woodbridge Canal and Irrigation Company, dated March 24th, 1890, and recorded in book "A," vol. 58 of Deeds, page 113, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

5. A right of way 100 feet wide, as described in a deed from M. A. Shinn to the Woodbridge Canal and Irrigation Company, dated April 4th, 1890, recorded in book "A," vol. 58 of deeds, page 112, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

6. A right of way 100 feet wide, as described in a deed from Robert Boyce to the Woodbridge Canal and Irrigation Company, dated March 24th, 1890, recorded in book "A," volume 73 of
202 Deeds, page 105, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

7. A right of way 100 feet wide as described in a deed from John Boyce and Amos Boyce to the Woodbridge Canal and Irrigation Company, dated March 24th, 1890, and recorded in book "A," vol. 58 of Deeds, page 109, record of San Joaquin County, to which deed and the record thereof, reference is hereby made for more particular description.

8. A right of way 100 feet wide as described in a deed from R. W. Williams to the Woodbridge Canal and Irrigation Company, dated December 9th, 1889, recorded in book "A," vol. 58 of Deeds, page 118, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

9. A right of way 50 feet wide as described in a deed from

J. A. Sollinger to the Woodbridge Canal and Irrigation Company dated March 24th, 1890, recorded in book "A," vol. 58 of Deeds, page 132, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

10. A right of way 50 feet wide as described in a deed from A. H. Randall to the Woodbridge Canal and Irrigation Company, dated December 30th, 1889, recorded in book "A," vol. 58 of Deeds, page 131, Records of San Joaquin County, to which deed and the
203 record thereof reference is hereby made for more particular description.

11. A right of way 50 feet wide as described in a deed from N. N. Laufenberg to the Woodbridge Canal and Irrigation Company dated December 19th, 1889, recorded in book "A," vol. 58 of Deeds, page 128, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

12. A right of way 50 feet wide as described in a deed from R. E. Wilhoit and Joseph Quillen to the Woodbridge Canal and Irrigation Company, dated December 19th, 1889, recorded in book "A," vol. 58 of Deeds, page 140, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

13. A right of way 50 feet wide as described in a deed from R. E. Wilhoit to the Woodbridge Canal and Irrigation Company, dated December 13th, 1889, recorded in book "A," vol. 58 of Deeds, page 139, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

14. A right of way 50 feet wide as described in a grant from Louis Voucher to B. A. Laws, and a transfer thereof from said B. A. Laws to the Woodbridge Canal and Irrigation Company, dated October 27th, 1890, and which grant and transfer were recorded in book "G," vol. 8 of Miscellaneous, page 180, records of San Joaquin County, to which grant and transfer and the record thereof
204 reference is hereby made for more particular description.

15. A right of way 100 feet wide as described in a deed from F. T. Baldwin, C. B. Hart, J. C. Campbell, Joshua Chadborne, H. Arandt, and L. N. Shippee to the Woodbridge Canal and Irrigation Company, dated May 14th, 1890, recorded in book "A," vol. 58 of Deeds of Highway, at page 92, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

16. A right of way 100 feet wide, as described in a deed from A. N. Harshner to the Woodbridge Canal and Irrigation Company, dated April 2, 1890, recorded in book "A," vol. 58 of Deeds, page 107, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

17. A right of way 100 feet wide as described in a deed from Elvira Franklin to the Woodbridge Canal and Irrigation Company, dated April 4, 1890, recorded in book "A," vol. 58 of Deeds, page 120, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

18. A right of way 50 feet wide as described in a deed from Jacob Beschofberger to the Woodbridge Canal and Irrigation Company, dated April 2, 1890, recorded in book "A," vol. 58 of Deeds, page 122, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

205 19. A right of way 100 feet wide as described in a deed from R. J. Parsons to the Woodbridge Canal and Irrigation Company, dated April 2d, 1890, recorded in book "A," vol. 58 of Deeds, page 115, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

20. A right of way 100 feet wide as described in a deed from John N. Posey and Jacob Dornbach to the Woodbridge Canal and Irrigation Company, dated April 4th, 1890, recorded in book "A," vol. 58 of Deeds, page 123, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

21. A right of way 50 feet wide as described in a deed from Jacob Engelandt to the Woodbridge Canal and Irrigation Company, dated April 3d, 1890, recorded in book "A," vol. 58 of deeds, page 125, records of San Joaquin County to which deed and the record thereof reference is hereby made for more particular description.

22. A right of way 50 feet wide as described in a deed from R. W. Williams to Woodbridge Canal and Irrigation Company, dated March 5th, 1892, recorded in book "A," vol. 58 of Deeds, page 185, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

23. A right of way 50 feet wide as described in a deed from Thomas R. Burkett to the Woodbridge Canal and Irrigation Company, dated March 5th, 1892, recorded in book "A," vol. 58
206 of deeds, page 187, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

24. A right of way 150 feet wide, as described in a deed from John Perrott to the Woodbridge Canal and Irrigation Company, dated March 14th, 1890, recorded in book "A," vol. 58 of Deeds, page 99, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

25. A right of way 100 feet wide, as described in a deed from Mary J. Taylor to the Woodbridge Canal and Irrigation Company, dated March 26th, 1890, recorded in book "A," vol. 58 of Deeds, page 149, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

26. A right of way 100 feet wide, as described in a deed from H. C. Gillingham to the Woodbridge Canal and Irrigation Company, dated March 29, 1890, recorded in book "A," vol. 58 of Deeds, page 100, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

27. A right of way 100 feet wide, as described in a deed from David Housh to the Woodbridge Canal and Irrigation Company, dated March 28th, 1890, recorded in book "A," vol. 58 of Deeds, page 160, records of San Joaquin County, to which deed and
207 the record thereof reference is hereby made for more particular description.

28. A right of way 100 feet wide, as described in a deed from Margaret Copse to the Woodbridge Canal and Irrigation Company, dated March 31st, 1890, recorded in book "A," vol. 58 of Deeds, page 155, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

29. A right of way 100 feet wide, as described in a deed from Henry Beckman to the Woodbridge Canal and Irrigation Company, dated September 2d, 1890, recorded in book "A," vol. 58 of Deeds (Highway), page 202, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

30. A right of way 100 feet wide, as described in a deed from Mary Beckman to the Woodbridge Canal and Irrigation Company, dated October 31st, 1890, recorded in Book "A" 58 of Deeds (Highway), page 205 records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

31. A right of way 150 feet wide, as described in a deed from Mary Beckman to the Woodbridge Canal and Irrigation Company, dated October 31st, 1890, recorded in book "A," vol. 58 of Deeds (Highway), page 204, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

208 32. A right of way 100 feet wide, as described in a deed from Ezra Fiske to the Woodbridge Canal and Irrigation Company, dated March 26th, 1890, recorded in book "A," vol. 58 of Deeds, page 102, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

33. A right of way 100 feet wide, as described in deed from Margaret Copsey to the Woodbridge Canal and Irrigation Company, dated March 31st, 1890, recorded in book "A," vol. 58 of Deeds, page 153, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

34. A right of way 60 feet wide, as described in a deed from L. H. Shippee to the Woodbridge Canal and Irrigation Company, dated October 11th, 1893, recorded in book "A," vol. 58, Rights of Way, page 22, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

35. A right of way 100 feet wide, as described in a deed from L. M. Morse to the Woodbridge Canal and Irrigation Company, dated March 25th, 1891, recorded in book "A," vol. 58 of Deeds, page 164,

records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

36. A right of way 60 feet wide, as described in a deed from C. Swain to the Woodbridge Canal and Irrigation Company,
209 dated June 2d, 1890, recorded in book "A," vol. 58, Highways, page 210, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

37. A right of way 60 feet wide, as described in a deed from Helen Weber, Julia H. Weber and C. N. Weber to the Woodbridge Canal and Irrigation Company, dated January 2d, 1894, recorded in book "A," vol. 83 of Deeds, page 175, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

38. A right of way 60 feet wide, as described in a deed from Geo. Mosher to Woodbridge Canal and Irrigation Company, dated September 15th, 1893, recorded in book "A," vol. 58 of Deeds, page 215, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

39. A right of way 60 feet wide, as described in a deed from C. Swain and George L. Hildredth to the Woodbridge Canal and Irrigation Company, dated December 1st, 1893, recorded in *ob*ok, "A," vol. 58 Highways, page 227, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

40. A right of way 50 feet wide, as described in a deed from Frank Davis to Woodbridge Canal and Irrigation Company, dated August 14th, 1894, recorded in book "A," vol. 83 of Deeds, page 133, records of San Joaquin County, to which deed and the record thereof
210 reference is hereby made for more particular description.

41. A right of way 70 feet wide, as described in deed from Frank Davis to Woodbridge Canal and Irrigation Company, dated September 7th, 1893, recorded in book "A," vol. 83 of Deeds, page 131, records of San Joaquin County to which deed and the record thereof reference is hereby made for more particular description.

42. A right of way as described in a certain grant from John Perrott and B. A. Laws, dated April 19th, 1889, and by said B. A. Laws transferred to the Woodbridge Canal and Irrigation Company October 27th, 1890, which grant and the transfer thereof is recorded in book "A," vol. 58 of Deeds, page 151, records of San Joaquin County and to which grant and transfer and the record thereof reference is hereby made for more particular description.

43. A right of way as described in a deed from Emma Metz to the Woodbridge Canal and Irrigation Company, dated December 4th, 1889, recorded in book "A," vol. 58 of Deeds, page 97 records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

44. A right of way 120 feet wide as described in a deed from A. S. Thomas and Sarah E. Thomas to the Woodbridge Canal and Irrigation Company, dated November 26th, 1889, recorded in book "A," vol. 58 of Deeds, page 134, records of San Joaquin County, to which

deed and the record thereof reference is hereby made for more particular description.

211 45. A right of way 30 feet wide, as described in an agreement between the Northern Railway Company and the Woodbridge Canal and Irrigation Company, dated March 7th, 1890, recorded in book "G," vol. 8 of Miscellaneous, page 334, records of San Joaquin County, to which agreement and the record thereof reference is hereby made for more particular description.

46. A right of way for the main canal 120 feet wide, one for the north branch canal 100 feet wide, and one for the south branch canal 100 feet wide, as described in a deed from H. C. Covell to Byron D. Beckwith and B. A. Laws, dated November 2d, 1889, and by said Byron D. Beckwith and B. A. Laws transferred to the Woodbridge Canal and Irrigation Company October 27th, 1890, which deed and transfer are recorded in book "G," vol. 8, Miscellaneous, page 353, records San Joaquin County, to which deed and transfer and the record thereof reference is hereby made for more particular description.

47. A right of way 60 feet wide, as described in a deed from J. D. Peters to the Woodbridge Canal and Irrigation Company dated September 14th, 1893, recorded in book 8, vol. 79 of Deeds, page 506, records of San Joaquin County, to which deed and the record thereof reference is hereby made for more particular description.

And it is further ordered and adjudged: That said complainant do have and recover of and from the said Intervener J. C.

212 Thompson the sum of —— dollars for its costs of suit incurred in the matter of the said petition of the said Thompson.

And that said complainant do have and recover of and from the said interveners, R. Franklin, Samuel Estees, Edgar Bryant, Joseph J. Hinckley, H. H. Saunders, and J. N. Hinckley, the sum of —— dollars for its costs of suit incurred in the matter of their said petition for a mechanic's lien.

Said costs to be taxed by the clerk of this court and entered in this decree upon a verified memorandum of the amount thereof being filed herein by the complainant, or one of its solicitors; and execution shall be issued therefor by the said clerk upon the application of the said complainant.

This decree is given and made subject to modification by the court at any time before final confirmation of sale, as to the upset or minimum price at which said sale may be made, and also as to the manner of sale of personal property or choses in action or securities thereunder; and subject to the right of the Court at any time before the sale to authorize the withdrawal of choses in action and securities from sale and the settlement, compromise and cancellation thereof.

Dated this 18 day of Sept., A. D. 1897.

WM. W. MORROW,
Circuit Judge.

[Endorsed:] Filed and entered September 18th, 1897. Southard Hoffman, Clerk.

213 In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Complainant,

vs.

WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendant and Interveners.

Decree of Confirmation of Sale.

In this case, final decree of foreclosure and sale having been heretofore duly made and entered on the eighteenth day of September, 1897, and Honorable E. H. Heacock, Master in Chancery, having in and by the said decree been duly appointed commissioner of this court to make sale of the property of the corporate defendant described in said decree, and having, under and in pursuance of the terms of said decree and the orders of the Court in that behalf duly made several times offered the said property for sale, and offered the same for sale in the mode and manner required by law and by the said decree and the orders of the Court in that behalf given and made, and on each occasion reported to the Court his proceedings in that behalf, and the bids made for such property, and none of said bids having been accepted or confirmed by the Court; and the matter having been referred to the said Commissioner, under order of the Court duly given and made, with instructions to again order
214 the said property for sale after notice duly given as in the said order provided, and the said commissioner having on the 18th day of July, 1898, after notice given as provided in said order, again offered the said property for sale, and in pursuance of said order, on or before the 25th day of July, 1898, filed in this court a report of his proceedings under said order, and of all bids offered or made for said property at the sale so held on the 18th day of July, 1898, and the same having come up for hearing before the Court on the said 25th day of July, 1898, and the hearing thereon having been then continued for one week and until the first day of August, 1898, when the hearing thereon was again continued until the eighth day of August, 1898, and the same having been duly called in its order for hearing on the said 8th day of August, 1898, all parties in interest being present by their respective counsel and solicitors, and it appearing from the said report of said commissioner that on the said 18th day of July, 1898, at the time and place appointed, the said property had again been offered for sale in the manner required by law and the orders of the Court in that behalf, and that two bids had been made therefor, viz.: One by Franklin

Davis of eleven thousand dollars in gold coin, and twenty per cent. thereof deposited in gold coin with the said commissioner, accompanied with an agreement by said Franklin Davis that in case said bid was accepted by the Court, and sale confirmed to him thereon he would pay in the balance of said sum of
215 $11,000.00 in gold coin or in default thereof forfeit the said deposit so made; and another by E. C. Chapman, the receiver, of $22,350.00, payable as follows:

By amount of claims of receiver, as allowed in and by the decree of foreclosure	$12,105.72
By amount of claims of Fox & Gray, counsel for receiver, as allowed in and by said decree	9,039.43
Balance to be paid in coin	2,354.85
Making a total of	$23,500.00

—said bid subject to a lien upon the property for all further claims fixed by the decree and allowed as and for receiver's certificates and expenses incurred by the receiver in said cause, and upon which bid the said E. C. Chapman had deposited the sum of $470.97, in cash, as and for twenty per cent. upon that part of said bid which was to be paid in cash, with an agreement that in case such bid as accepted and confirmed by the Court he would make the same good, or in default thereof forfeit the sum so deposited; and it further appearing from said report that no other or further bids had been made.

Exception and objections were then and there interposed and made to the acceptance or confirmation of each of said bids, and fully argued before the court, and after such argument the bid of said E. C. Chapman was withdrawn, and thereupon, on motion of counsel, and with the consent and approval of all the parties in interest in the cause, the Court consented to receive further bids in
216 open court, and thereupon W. B. Bradbury and E. F. Card made and filed a bid in open court, of the sum of $12,000.00 in gold coin, and deposited twenty per cent. thereof, with an agreement that in case said bid was accepted, he would pay in the balance thereof, or in default of such payment would forfeit the twenty per cent. so deposited, and Chas. N. Fox made and filed a written bid signed by himself, in words and figures as follows:

(Giving the Title of Court and Cause.)

"Now comes the undersigned and bids and offers for the property offered for sale in this cause and described in the decree of foreclosure heretofore entered herein, the sum of twenty-one thousand dollars, certificates, assignments and conveyances thereof to be made to and in the name of G. Howard Thompson, and payment of the amount so offered and bid to be made as follows:

1. Nine thousand dollars thereof by the filing and entry of good and sufficient satisfaction and discharge of the allowance made in

and by the said decree in favor of E. C. Chapman, receiver, as and for his compensation as receiver in said cause.

2. Nine thousand dollars thereof by the filing and entry of good and sufficient satisfaction and discharge of the allowance made in and by the said decree of foreclosure in favor of Fox & Gray, as and for compensation for their services as counsel for said receiver.

3. Three thousand dollars thereof in gold coin of the United States.

(Signed) CHAS. N. FOX."

217 And thereupon the Court ordered that the further hearing of the matter be continued until August 10th, 1898, at 11 o'clock A. M., to which time the Court then adjourned.

The hearing of the case being again resumed on the said 10th day of August, 1898, Mr. Fox asked leave to substitute for the bid signed and filed by him on August 8th, 1898, a duplicate thereof signed by said G. Howard Thompson in person, and leave being granted, a duplicate of the bid hereinabove last quoted signed by the said G. Howard Thompson instead of by Chas. N. Fox was presented and filled and substituted for the bid so signed by said Chas. N. Fox, and with it was presented and filed, subject to acceptance and confirmation of said bid of G. Howard Thompson, to be returned in case said bid should not be accepted and confirmed, a receipt in full for the said sum of nine thousand dollars, the allowance made in and by the said decree of foreclosure in favor of said E. C. Chapman, as and for his compensation as receiver in said cause, and also in full of the said sum of nine thousand dollars, allowance made in and by the said decree of foreclosure in favor of Fox & Gray as and for their compensation for their services as counsel for said receiver, which receipt was signed by the Bank of California by its assistant cashier, also by the said E. C. Chapman and by the said Fox & Gray; and with the said papers was also deposited, subject to acceptance and confirmation of said bid, to be returned in case the same was not accepted and confirmed, a certified check, covering the
218 amount of the cash portion of said bid and one thousand dollars in excess thereof also two hundred dollars in gold coin of the United States, making the total of said deposit of check and coin of $4,200.00, being equal to twenty per cent. upon the total amount of the bid so made as aforesaid, and accompanying the same with a written agreement made by said E. C. Chapman and Fox & Gray, who made said deposit of check and cash, that in case said bid of said G. Howard Thompson was accepted and confirmed according to the terms thereof, and default be made in complying with the terms thereof on the part of said G. Howard Thompson, then the full amount of said $4,200.00 so deposited in check and cash should be forfeited, otherwise three thousand dollars thereof to be used in complying with the terms of said bid, and the remaining $1,200.00 thereof to be returned to them.

Said Franklin Davis also made a second bid, in the sum of $12,500.00 in gold coin of the United States, with an agreement in writing to forfeit twenty per cent thereof in case said bid was not

made good, if accepted and confirmed, and deposited a certified check more than sufficient to meet the said twenty per cent. upon said bid.

No further bids being offered, and exceptions being then and there made to the acceptance and confirmation of each and every of said bids, the same were then and there argued and submitted, and it was by the Court then and there ordered and it is by the Court,

Now here ordered, adjudged and decreed, that neither of the bids made by said Franklin Davis be confirmed, and that the same
219 and each of them be not confirmed, and that the checks and money deposited by said Davis be returned to him.

And it is further ordered, adjudged and decreed, that the bid so made by said W. B. Bradbury and E. F. Card be not confirmed, and that the check deposited by said Bradbury be returned to him.

And it appearing to the Court that the said sums of nine thousand dollars allowed and decreed, in and by the said decree of foreclosure to be paid to the said E. C. Chapman, receiver, as and for his compensation as receiver, and of nine thousand dollars allowed and decreed, in and by the said decree of foreclosure, to be paid to Fox & Gray as and for their compensation as counsel for said receiver, are costs of court, entitled to priority of payment out of the proceeds of such sale next after the costs of sale; and it further appearing that no higher or better bid has been or can be secured for said property, it is by the Court further

Ordered, adjudged and decreed that the bid so made by the said G. Howard Thompson be, and the same is hereby accepted according to the terms thereof and that said property be struck off and sold to him therefor; that satisfaction and discharge of so much of said decree of foreclosure as provides that the sum of nine thousand dollars be allowed and paid to said E. C. Chapman as and for his compensation as receiver, and of so much thereof as allows and decrees that the sum of nine thousand dollars be allowed and paid to Messrs. Fox & Gray as and for their compensation for services as counsel for said receiver, and the said sum of three thousand
220 dollars in gold coin for which check was deposited as aforesaid, be accepted in satisfaction of said bid, and thereupon the balance of the money so deposited on behalf of said G. Howard Thompson, to wit, the sum of $1,200.00 so deposited to make up the twenty per cent. of the entire bid, required as security that the said bid would be made good, be thereupon returned to the parties making the deposit aforesaid.

And it is further ordered, adjudged and decreed, that the said bid so made by said G. Howard Thompson, and herein accepted and the sale so made thereunder to the said G. Howard Thompson, of all the property and franchises of the said defendant described in the said decree of foreclosure, be and the same is hereby finally and fully confirmed, and that the commissioner appointed to make the sale as aforesaid be and he is hereby ordered and directed to make, execute and deliver to the said G. Howard Thompson all necessary and proper assignments, bills of sale or other transfers of the accounts,

choses in action and other personal property included in said sale, and certificates of sale of the franchises and real property so sold, and in case redemption be not made of said property from such sale within six months from the said tenth day of August, 1898, in the manner provided by law, or if dispute arise as to the terms upon which such redemption may be made then in such manner and upon such terms as this Court shall by its order and decree adjudge and determine, the said commissioner make, execute and deliver to the said G. Howard Thompson, or his assigns, good and sufficient
221 deed or deeds of conveyance of the real property and franchise aforesaid.

And it is further ordered, adjudged and decreed, that upon demand, and presentation of the assignments, bills of sale, certificates of sale and transfers therefor, the said receiver turn over and deliver possession of the property so sold as aforesaid to the said G. Howard Thompson, or his assigns.

And it is further ordered, adjudged and decreed, that out of the money arising from and received upon such sale the clerk pay the costs of advertising and sale, including the compensation allowed to the commissioner for making such sale as fixed and established in said decree of foreclosure; the fees of the master on the reference made to him to examine and report upon the receiver's reports of receipts and expenses prior to the entry of said decree—the clerk's accruing costs and commissions, and that he apply and pay the balance, if any there be in payments pro rata on the receiver's certificates mentioned and provided for in said decree of foreclosure, such payments to be applied first to the accrued interest on said certificates respectively, and if more than sufficient to pay such accrued interest, then on account of the principal of such certificates respectively; and that said clerk report to this Court the balance due and remaining unpaid for or on account of any of the fees of officers or appointees of this Court, or of advances made by them or either of them, and for or on account of receiver's certificates or time checks or other expenses of the administration of said receiver, as
222 the same are fixed, established and allowed in and by the said decree of foreclosure, for the further consideration and action of this Court thereon; and also that the said receiver report to this Court, and render an account of his receipts, disbursements and expenses in the management and care of said property between the date of said decree of foreclosure and the date of sale, and transfer of possession thereunder, for examination and settlement.

And it is further ordered, that jurisdiction of this cause and the parties thereto be and the same is hereby retained by the Court, until redemption is made or title deeds have passed as herein provided, and until the coming in of the reports of the said clerk and receiver herein provided for, and the final action of the Court thereon, and the final payment of the balance of the costs and expenses of this court and its officers, and of the advances made and indebtedness incurred by said receiver which have been or may be allowed by the Court, in the management and care of the property placed in his

charge, or until the further and final order of the Court in that behalf.

August 15, 1898.

WM. W. MORROW,
Circuit Judge.

[Endorsed:] Filed and entered August 15, 1898. Southard Hoffman, Clerk.

223 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY.

Report of Clerk Pursuant to Decree of August 15, 1898.

To the Honorable William W. Morrow, United States Circuit Judge:

In obedience to the decree of confirmation of sale, filed August 15th, 1898, I respectfully report that the following payments have been made from the proceeds of sale under decree of foreclosure:

Proceeds of sale		$21,000.00
The receiver for his compensation	$9,000.00	
Messrs. Fox & Gray, as attorneys' fees	9,000.00	
E. H. Heacock, Commissioner, etc	500.00	
E. H. Heacock, Master, etc	50.00	
Advertising bills	1,737.60	
Stenographers' fees	20.00	
Clerk's Costs	201.70	
Pro rata payment on the accrued interest on the receiver's certificates	490.70	
	$21,000.00	$21,000.00

224 I further report that of the amounts found due by the decree of foreclosure of September 18, 1897, there remains still unpaid:

Receiver's certificates	$12,292.47
E. C. Chapman, Esq., receiver for advances made by him, care and management of property	3,105.72
Time checks issued by receiver	5,728.89
Work done and material furnished for said receiver, for which no time checks or certificates have been issued	2,269.85
Expenses operating canal system	5,728.54

W. C. Pidge	1,801.37
F. C. McClelland	922.12
Scrivner & Schell and John B. Hall	9,000.00
E. P. Cole	2,000.00
	$42,848.96

Sept. 7th, 1898.

Respectfully submitted,

SOUTHARD HOFFMAN,
Clerk U. S. Circuit Court, Northern District of California.

[Endorsed:] Filed September 7, 1898. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

225 In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

In Equity.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Defendant.

Final Report and Petition of Receiver.

To the Honorable the Justices of the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California:

Now comes E. C. Chapman, receiver appointed by the Court in the above-entitled cause, and makes and submits this his final report in said cause, as follows:

As shown by the records and files of the court in this cause, decree of foreclosure and sale was duly given and made in said cause on the 18th day of September, 1897, and the commissioner appointed to make sale thereunder promptly qualified and proceeded to the performance of the duty assigned him, but although the most diligent effort was made, and a large expense incurred, in trying to effect a sale, no sale was finally made of the property at a price satisfactory to either the parties in interest or the Court until the 10th day of August, 1898, when the property was struck off and sold to G. Howard Thompson for the sum of $21,000.00, that being
226 the highest and best bid made therefor, and decree of confirmation of such sale, subject to redemption within six months as provided by the laws of the State, was duly given and made on the 15th day of August, 1898, and certificates of such sale duly executed and delivered and filed.

That from the date of said decree to the date of said sale, and the confirmation thereof, and the issue of certificate of sale thereunder,

full eleven months, it was necessary that said receiver should, and he did remain in full and absolute charge and possession of said mortgaged property, and although he did not attempt during that period to keep it a going concern, as he had theretofore done, it was necessary to give, and he did give, the matter his personal attention from time to time, and to make, and he did make three visits of inspection to the property, at an expense of $47.40 actually paid out; and it was also necessary, during the whole of that time, in order to preserve the property, franchises and water rights subject to the mortgage, and so decreed to be sold it was necessary that the receiver should keep, and he did keep two men employed—one at the headquarters of said works at Woodbridge, and one at the upper water right in Calaveras county from the date of said decree, or rather from the date of his report upon which said decree was founded, and the day when said decree was ordered prepared, which was August 9th, 1897, to the date of said sale—Twelve months, at a cost of $75 per month, or $900 each; and he also necessarily incurred
227 other expenses in the care and management of said property during said period, as shown in his statement of account, hereinafter given. During all that time, also, his counsel was engaged, and continued to look after the matter, and was frequently consulted by said receiver upon questions of law which arose in the conduct and management of the business, and, on behalf of the receiver in endeavoring to secure and protect the interests of all parties interested, and to secure a legal and regular sale of the property at the best price possible, and in that behalf prepared and filed many papers in the cause, and had and attended many hearings and arguments before the Court, all to the end of securing the best possible sale of the property for the benefit of the parties in interest, and the protection of the officers of the court and their employees from loss thereunder, all of which appears by the records and files of the Court in this cause.

Pending the sale of such property, and on the first of February, 1898, under authority given by order of court made on that day, I sold and assigned a note and mortgage given by Thomas E. Jones to the said Woodbridge Canal and Irrigation Company, dated June 25th, 1894, for the sum of $500 cash, which I received, out of which I returned the sum of $175, money which I had received on account of interest on another mortgage which had come into my possession as receiver and which I had supposed belonged to the assets of the Woodbridge Canal and Irrigation Company at the time of making my former report in this cause, but which had in fact been assigned and transferred by the Woodbridge Canal and Irrigation
228 Company before my appointment as receiver, leaving a balance of the moneys so received by me of $325.

Since my last report I have paid out to and for F. G. McClelland on account of services rendered by him, the sum of $772, leaving a balance of $128 still due him on account of services so rendered since my last report, and in addition to the sum of $300 due to him for services prior to my last report and allowed in and by the decree of foreclosure entered herein.

My disbursements and receipts, since the date of my report upon which the said decree was based, have been as follows:

Disbursements.

Interest erroneously collected, as above stated	$175.00
Paid F. G. McClelland on account of services rendered	772.00
Paid costs and expenses of witnesses before the Commissioner on settling my former account	35.00
Paid expenses of three trips made by myself to the works	47.40
Total	$1,029.40
Receipts	$500.00
—which being deducted from my disbursements leaves balance due on account of expenses	$529.40

229 There is also a balance due to said F. G. McClelland on account of services rendered since my last report of $128.00, and also due J. J. Hinckley for services since my last report of $900.00.

To these should also be added such reasonable sum as the Court shall deem to be just for my services as receiver for the period of twelve months from the date of my last report.

And also to my counsel, Chas. N. Fox, such reasonable sum as to the Court shall deem proper and just for his services during the same period.

It also appears from the report of the clerk of this court, made in pursuance of the order of confirmation of such sale, that there is a deficiency on account of the costs and expenses incurred by the receiver prior to the entry of said decree of foreclosure, and which were allowed and established by the said decree, in the following sums, to wit:

On account of receiver's certificates outstanding	$12,292.47
In favor of this receiver for advances	3,105.72
On account of time checks issued by receiver and now outstanding	5,728.89
On account of work done and material furnished, for which no time checks or receiver's certificates were issued	2,269.85

Of this amount the sum of $10,265.15 (being the principal due upon said receiver's certificates) bears interest at the rate of ten per cent. per annum from the date of said decree, and the balance
230 of said several sums bears interest at the rate of seven per cent. per annum from the date of said decree.

And the said receiver reports and avers that each and all and every of the foregoing items of expenditure and of the several sums of money hereinbefore mentioned are costs and expenses of this court and its officers necessarily incurred in the prosecution of said action and for which the plaintiff in said action is primarily reliable

under the laws of the United States and of the State of California, and the rules and practice of the court; that they were incurred on the motion and the request of the said plaintiff; that of right they should have been paid in advance by the said plaintiff, but upon the assurance of said plaintiff that the property against which it was seeking to foreclose was amply sufficient to pay all the costs and expenses so incurred, and the whole amount of the indebtedness for which said action was brought, they were not so paid but were left to be paid out of the funds arising from the sale of said property; that the proceeds of such sale were wholly insufficient to pay even the costs and expenses of the court in that behalf and that after applying the proceeds of sale to the satisfaction of the costs and expenses of sale, and of the compensation allowed to the said receiver and his counsel in and by the said decree of foreclosure, as authorized by the Court, the amounts hereinbefore stated remain still unpaid and entirely unsatisfied.

Wherefore your petitioner, the said receiver, prays this Honorable Court that the balance due him on account of his receipts
231 and disbursements since the making of said decree, and also the balance due to his employees as hereinbefore stated since the making of the report upon which said decree was based, and the compensation to be allowed to the said receiver, and to his counsel since the date of said decree, be fixed and established by this Court, and that judgment be entered in favor of this receiver, or of the clerk, or such other officer of the court as the Court shall direct, against the plaintiff in this cause for the full amount of the deficiency hereinbefore stated, with the sums so allowed for services and expenses since the date of said decree, and that the proper process of Court be issued for the collection thereof from plaintiff, and that when collected the same be paid into court to be by the Court disbursed to the several persons entitled thereto.

And your petitioner, the said receiver, for other, further and different reasons why the said plaintiff should be compelled to pay all the costs and expenses of the court and its officers and receiver in the above-entitled cause further shows and avers;

That this action was brought by the plaintiff for the purpose of foreclosing a certain mortgage or trust deed made by the Woodbridge Canal and Irrigation Company to the said Atlantic Trust Company bearing date on or about the 17th day of July, 1891, and duly authorized by the said Woodbridge Canal and Irrigation Company a copy of which mortgage or trust deed is attached to said plaintiff's bill of complaint in this cause, and is now here referred to as if made a part of this report and petition. That said mortgage was
232 given to the said Atlantic Trust Company as trustee for the bondholders to secure the payment of a series of one hundred bonds issued by the said Woodbridge Canal and Irrigation Company for the sum of one thousand dollars each, payable in the year 1901, at the office of the said Atlantic Trust Company, with interest thereon at the rate of six per cent. per annum, payable semi-annually, at the same place on the first day of March and first day of September in each year; that under and by the provisions of Article

Fifth of said mortgage or trust deed, it was provided that in case the said mortgagor should "for the space of six months, make default in payment of said semi-annual interest to become due on any, either, or the whole of said mortgage bonds, then after the expiration of said six months from the time it became due, and without demand or notice, at the election or option of the majority in interest of the holders of said bonds then issued and outstanding expressed in writing, the whole principal sum mentioned in each and all of said mortgage bonds then outstanding, shall forthwith become due and payable, and the lien and encumbrance hereby created for the security and payment thereof may at once be enforced."

That in and by Article Sixth of said mortgage or trust deed it was provided as follows: "It is further agreed in case of default in the payment of the semi-annual interest of the said bonds for the space of six months, or of any tax or assessment for the same period, that the trustee and its successors are hereby expressly authorized
233 and empowered, upon the request in writing of the owners or holders of the majority of said bonds, then outstanding, or if the principal of the bonds shall be due, upon the request of the holders of a majority of the bonds outstanding, to enter into and upon, and to take actual possession of all the property, real and personal, and rights, franchises and privileges of the premises hereby conveyed, and each and every part thereof, and by themselves, or by their attorneys or agents, have, hold, use and enjoy the same, and from time to time make all repairs and replacements, and all useful alterations, additions and improvements thereto, as fully as the Company might have done before such entry, and to collect and receive all tolls, incomes, rent, issues and profits of the same and of every part thereof. The trustee and its successor or successors shall and may, and hereby are expressly authorized and empowered on such default to sell at public auction, to the highest bidder, the entire property, real and personal, rights, franchises and privileges herein conveyed. Said sale shall be held either in the city of Stockton, or the city of San Francisco. At least two months' notice shall be given of the time, place and terms of said sale, by advertising the same in one or more newspapers of good circulation, in the city of San Francisco, and wherever else required by law, and continuing such advertisement at least once a week, until the time of sale; and the trustee may, at its discretion, adjourn said sale from time to time, giving reasonable notice of the time and place where it will take place, and as the attorney or attorneys in
234 fact of the Company, or its successors and assigns, shall have full power and authority to make, execute and deliver to the purchaser or purchasers thereof good, valid and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee simple or otherwise, of the entire property herein conveyed, and all the rights, franchises and privileges of the Company, or its successors or assigns, which conveyance or conveyances, transfer or deeds shall vest in the purchaser or purchasers all the right, title, interest and estate whatsoever, reversionary, or in possession, or

which they may be entitled to receive, have or hold of the Company; and said sale shall be a complete and perpetual bar or estoppel, both in law and in equity, against the Company, its successors and assigns, and all persons or parties lawfully claiming by, from or under it or then, in anywise or manner whatsoever; and the said Company hereby covenants and agrees to waive, and expressly covenants and agrees that neither this Company, nor its successors, shall have, or claim any advantage of any valuation, appraisement or extension."

That in and by Article Seventh of said mortgage or trust deed it was provided as follows:

"Out of the moneys received from any tolls, income, rents, profits and earnings of said canal and premises, or out of the proceeds of said sale, so to be made as aforesaid, or the Sinking Fund above provided for, after first deducting the expenses, dis-
235 bursements, costs, charges and counsel fees, incurred in and about the conducting of said sale, or the working and operating said canal, including the compensation and commission of said Trustee in and about the execution of this trust, and all expenses of repairs, replacements, alterations, additions and improvements, and all payments for taxes, assessments, charges or liens on said premises, or any part thereof, the Trustee shall, if the amount be sufficient for that purpose, pay said mortgage bonds, or so many of them as shall be outstanding and unpaid, together with all interest then due upon the same; and if the amount be insufficient, then it shall divide the same pro rata among the outstanding bonds, and the surplus of all such moneys or proceeds of sale, if any there be, shall be paid to the Company, or its successors or assigns."

That in and by Article Eighth of said mortgage or trust deed it was provided as follows:

"Nothing herein shall be construed as limiting the right of the trustee to apply to any competent court for a decree of foreclosure and sale under this indenture, or for the usual relief in such proceedings, and the said Trustee, or its successor, may, in its discretion, so proceed."

That in and by Article Ninth of said mortgage or trust deed it was provided as follows:

"In case it shall be required by the holders of bonds secured by this indenture to enforce any of their rights hereby secured, the said Trustees shall not be required to incur any expense or liability
236 in connection therewith, until satisfactorily indemnified therefor, and all powers in these presents conferred upon the Trustee (except as otherwise herein specifically provided) shall be deemed discretionary, and it shall incur no liability in exercising or declining to exercise such discretionary powers, provided it acts in good faith in regard thereto."

And your petitioner, the said Receiver, upon and according to his information and belief further avers and shows, that up to September 28th, 1894, only five days before this action was commenced, the said Woodbridge Canal and Irrigation Company had never in fact sold any of said bonds, but the title to the same still remained in the

said corporate defendant Woodbridge Canal and Irrigation Company; that in lieu of selling said bonds and thereby raising money to carry on its business said Woodbridge Canal and Irrigation Company had borrowed large sums of money on its promissory notes bearing interest at the rate of eight per cent per annum and hypothecated the majority of said bonds with the holders of said notes as collateral security for the payment thereof at the rate of about two dollars and a half for each dollar so borrowed; and the remainder of said bonds which the Court upon the trial of said cause found to be outstanding were, as the Court found, and so decreed, pledged as collateral security to other creditors of the said Woodbridge Canal and Irrigation Company for work and labor and material furnished to said corporate defendant; that on the 28th day of September, 1894, at
237 a meeting of the board of directors of said corporate defendant, they authorized the sale and exchange of said bonds so hypothecated as last aforesaid to and with the parties so holding the same as collateral security for work and labor and materials furnished as aforesaid at and for the price of seventy-five cents on each dollar of the par value of the bonds so pledged; that the said corporate defendant did not in fact default on the interest upon its bonds prior to September 1st, 1894, and no notification of defalcation in the payment of interest on said bonds was ever given by the holders thereof to the plaintiff prior to the commencement of this action, but at a meeting of the board of directors of the said corporate defendant Woodbridge Canal and Irrigation Company held at the office of the Company on the first day of October, 1894, the said corporate defendant Woodbridge Canal and Irrigation Company, by its board of directors, declared its inability to pay the interest upon said bonds falling due September 1st, 1894, or any of its other indebtedness, and that it was unable and would continue unable to pay the same at any time within six months from that date, and undertook by resolution passed by said board to waive the conditions and provisions specified or provided in Article Fifth of the deed of trust aforesaid, and authorized and requested the said Atlantic Trust Company, the plaintiff herein, immediately to commence suit in equity for the purpose of foreclosing the said mortgage and have a receiver appointed in said cause, as was subsequently done on the 3d day of October, 1894; that upon the filing of said complaint the said defendant
238 Woodbridge Canal and Irrigation Company voluntarily appeared in said cause by counsel and consented to the appointment of receiver in this cause; that no request in writing, or otherwise, was ever made to the said plaintiff by the holders of bonds secured by said mortgage that the same be foreclosed, but the said plaintiff immediately and in compliance with the request of said corporate defendant commenced this action and procured the appointment of receiver as aforesaid, with an order of Court to manage and carry on the property as a going concern, and without paying any of the costs or expenses of managing or carrying on the property, but so conducting the case as to secure the same to be done by the officers and appointees of the court, without any knowledge on the part of the Court or its officers that the plaintiff was so acting collu-

sively with the said corporate defendant, kept the property in court and managed as aforesaid for three years before it took its decree of foreclosure, and involved the Court and its officers and receiver in all the expenses hereinbefore mentioned, in addition to such as have been paid out of the proceeds of the sale which was finally made in the premises. Wherefore your petitioner, the said receiver, upon and according to this information and belief avers the said action was fraudulent and collusive as between the said plaintiff and the said corporate defendant, and the proceedings had therein, by reason whereof the costs and expenses for which your petitioner now prays judgment against the said plaintiff were incurred, were a fraud
239 upon the court and upon its officers, and the said plaintiff was and is liable in law and in equity for the payment of the same.

And your petitioner, the said receiver, upon and according to his information and belief further avers that the said corporate defendant, the Woodbridge Canal and Irrigation Company, is insolvent and unable to respond to any judgment for deficiency that has been or may be entered in this cause.

Wherefore your petitioner, the said receiver, prays the Court for the judgment and relief hereinbefore mentioned.

FOX & GRAY,
Attorneys for said Receiver.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

E. C. Chapman, being duly sworn, upon his oath says: That he is the receiver in the above-entitled cause and the petitioner in the foregoing petition; that he has heard read the said report of his account and proceedings as such receiver and all the averments of said petition and knows the contents thereof and that the same is true of his own knowledge except so far as the same are stated to be on his information or belief and as to those matters he believes it to be true.

E. C. CHAPMAN.

Subscribed and sworn to before me this 3d day of August, 1899.

[SEAL.] SOUTHARD HOFFMAN, *Clerk.*

240 [*Enclosed:*] Filed August 3d, 1899. Southard Hoffman, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Plaintiff,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Defendant.

Order to Show Cause on Petition of Receiver.

On reading and filing the final report and petition of the receiver heretofore appointed in the above-entitled cause, and the report of the clerk showing the amount of deficiency in the costs of court and its officers, after distribution of the fund derived from the sale of the mortgaged property mentioned in the complaint in this cause—

It is now here ordered that the Atlantic Trust Company, plaintiff in the above-entitled cause, appear and show cause in this court at the courtroom thereof, in the Appraisers' Building, in the city and county of San Francisco, on Monday the 11th day of December, A. D. 1899, at eleven o'clock A. M., or as soon thereafter as counsel can be heard, why the amount due to the receiver and his employees under his final report should not be settled and allowed, and
241 why judgment for the total amount of such deficiency, when ascertained, should not be entered against the said Atlantic Trust Company, plaintiff in said cause, and why said plaintiff should not be required to pay the same into court as in the said petition prayed.

Let a copy of this order and of the said petition be served upon the counsel of plaintiff not less than ten days before said day of hearing.

Dated this 18th day of November, 1899.

WM. W. MORROW, *Judge.*

[Endorsed:] Service of copy of the within is hereby admitted this 18th day of November, 1899, together with copy of final report of receiver. J. J. Scrivner, Geo. W. Schell, Jno. B. Hall, Attorneys for Compl'ts. Filed November 18th, 1899.

SOUTHARD HOFFMAN, *Clerk.*

242 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Respondent.

Demurrer of Complainant to Receiver's Report and Motion for Judgment.

Now comes the said complainant, The Atlantic Trust Company, a corporation, and by protestation, not confessing or acknowledging

all or any of the matters and things in the final report and motion for judgment of E. C. Chapman, receiver in the above-entitled cause, therein contained to be true, in such manner and form as the same are therein set forth and alleged, as to so much of said report and motion for judgment as seeks to have a judgment entered against the complainant above named for various items of costs and expenditures of the receiver pending his administration as such receiver, and for the receiver's certificates issued by him as such receiver, the said complainant doth demur thereto, upon the grounds hereinafter stated, to wit:

I.

That it appears from said report and motion for judgment and the facts therein set forth that the Court has no jurisdiction to
243 grant the relief prayed for in and by said report and motion for judgment, or any part thereof.

II.

That said report and motion for judgment does not state facts sufficiently to justify the Court in granting the relief prayed for in and by said report and motion for judgment, or any part thereof.

III.

That it appears in and by said report and motion for judgment that all of the matters and things therein set forth have been adjudicated by this Court in and by the final decree entered in said cause, and that this Court has no jurisdiction to make or enter any further order or decree with reference to said matters.

IV.

And the said Atlantic Trust Company specially demurs to the item mentioned in said report and motion for judgment, as follows: "On account of receiver's certificates outstanding $12,292.47," on the specific ground that the Court has no jurisdiction to make or enter any order, judgment or decree of any nature or kind whatsoever against the said complainant for said amount, or any part thereof.

And the said complainant further specially demurs to said item upon the ground that it does not appear from said report or motion to whom said sum of money is due, or whether the parties holding the same make any claim or demand for the same, or that
244 they are seeking, or have ever sought any relief against this complainant, or that they have ever authorized or instructed the receiver, as such receiver, to apply to this court for any of the relief with relation thereto sought in and by said report and motion for judgment.

V.

And the said complainant also specially demurs to the item in said report and motion as follows: "In favor of this receiver for advances $3,105.72," upon the ground that the same is *res adjudicata*, having been allowed the receiver in the final decree entered in this cause and declared a lien upon the funds derivable from the sale of

the property in his charge as such receiver; and upon the further ground that the Court has no jurisdiction to make any further order, judgment or decree with reference thereto; and upon the further special ground that the Court has no jurisdiction to make any order, judgment or decree ordering or adjudging that this complainant pay the same, or any portion thereof.

VI.

And the said complainant further demurs to the item in said report and motion for judgment reading as follows: "On account of time checks issued by receiver and now outstanding $5,728.89," upon the specific grounds, (*a*) that no authority is shown in said receiver for the issuance of said time checks by said receiver; (*b*) that it does not appear from said report and motion who are the holders of said time checks, or whether they are seeking, or
245 have sought a judgment against this complainant for the same; (*c*) it does not appear that the said receiver has ever been requested or authorized in any manner by the holders thereof to make any claim against this complainant with reference thereto; (*d*) and upon the further ground that this Court has no jurisdiction to make or enter any order or judgment against this complainant for the same, or any portion thereof.

VII.

Said complainant also specially demurs to the item in said report and motion for judgment reading as follows: "On account of work done and material furnished, for which no time checks or receiver's certificates were issued, $2,269.85," upon the following grounds, viz: (*a*) that no authority is shown in said receiver to contract said indebtedness; (*b*) that it does not appear when said work was done or material furnished; (*c*) it does not appear who the owners of said claims are, nor whether they have ever sought, or are now seeking, or have ever authorized or instructed the receiver to seek a judgment against this complainant therefor; (b) and on the further ground that this Court has no jurisdiction to make or enter any order, judgment or decree against this complainant for the same, or any part thereof; and upon the further ground that it does not appear from said report and motion that said item of expenditure was contracted under such conditions of emergency or necessity as would make them an item of expense chargeable against the trust fund.

246 VIII.

Complainant also specially demurs to the items of $125.00 alleged to be due F. G. McClelland, and $900.00 alleged to be due J. J. Hinckley for services alleged to have been performed since the last report of said receiver, on the ground that no authority is shown in said report and motion for judgment authorizing the receiver to contract said indebtedness, nor to make the same a lien upon any of the property of said corporation, or any of the funds derived from the sale of said property; nor is any reason shown why any judgment should be rendered for the same as against this complainant;

and upon the further ground that the court has no jurisdiction to make or enter any judgment against this complainant for the same, or any part thereof.

IX.

Complainant also specially demurs to the claims of the receiver and his attorney for additional compensation for services rendered in this cause, on the grounds that both of said matters have already been adjudicated by this Court and compensation allowed both the receiver and his attorney, which has been paid, as shown by the report and motion, and the Court has no jurisdiction to allow any such additional compensation, nor to render judgment against this complainant therefor.

X.

Complainant also demurs to the statement in said report
247 and motion for judgment, to the effect that the defendant in said cause, the Woodbridge Canal and Irrigation Company had never sold any of said bonds, but on the contrary the title to the same still remain in said corporation defendant, upon the ground that the same is *res adjudicata*, and that the Court found and adjudged in its final decree entered in this cause that the said Woodbridge Canal and Irrigation Company had sold said bonds, and that such finding and decree is final upon said subject, and that the facts and circumstances in relation thereto were fully before the Court before said finding and decree were made.

XI.

Complainant also specially demurs to that portion of said report and motion for judgment wherein it is alleged that this action was collusive between the said complainant and said Woodbridge Canal and Irrigation Company, upon the ground that the facts in relation thereto as stated in said report and motion were fully set out in the pleadings and in the decree in this cause, and the Court in its final decree found said facts and adjudged by its said final decree that said action was properly brought, and that the complainant had a right to maintain said cause, and that the whole question is rendered *res adjudicata* in and by said final decree.

XII.

And this complainant doth further and generally demur to each, all and every portion of the said report and motion for judgment of the receiver herein, upon the ground that it appears affirmatively upon the face of said report and motion for judgment, as well
248 as from an inspection of the records in this cause that each and every act performed by the complainant herein has been done and performed by it in the course of the execution of a trust, and that it has well and faithfully performed its said trust, and has not failed in the execution of any of its duties under said trust, and for the said reason it is exempt from any assessment of costs against it necessarily incurred in its said duties as trustee, and that

this court is without jurisdiction to render a judgment for either or any or all of the items sought to be charged against it by said motion and report.

Wherefore, complainant asks that said motion for judgment be denied, and that the order to show cause be discharged, and that complainant be awarded its reasonable costs herein.

SCRIVNER & HOPKINS,
Solicitors for Complainant.

J. J. SCRIVNER,
Of Counsel for Complainant.

John J. Scrivner, one of the solicitors and of counsel for the complainant herein, does hereby certify that he has read and is familiar with the above and foregoing demurrer, and that the same is in his opinion well founded in point of law.

Dated December 11th, 1899.

J. J. SCRIVNER.

249 UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, ss:

John J. Scrivner, of lawful age, being on his oath duly sworn, deposeth and saith: That he is a solicitor and of counsel for the Atlantic Trust Company, the complainant herein, and that he is duly authorized in the premises, and that this demurrer is not interposed for delay.

J. J. SCRIVNER.

Subscribed and sworn to before me, this 11th day of December, 1899.

[SEAL.] D. B. RICHARDS,
Notary Public in and for the City and County of San Francisco.

[Endorsed:] Service and receipt of a copy of the within demurrer admitted this 11th day of December, 1899. Fox & Gray, Attorneys for Receiver. Filed December 11th, 1899. Southard Hoffman, Clerk.

250 At a stated term, to wit, the March Term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Monday, the 11th day of March, in the year of our Lord one thousand nine hundred and one.

Present: The Honorable William W. Morrow, Circuit Judge.

No. 11950.

ATLANTIC TRUST COMPANY
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL.

Order Denying Receiver's Application for Order Directing Complainant to Pay Amount Due, etc.

In this cause the receiver's application (by order to show cause) for an order directing complainant to pay the amount due to receiver and his employees, etc., heretofore heard and submitted, having been fully considered, and the memorandum of opinion of the Court having been filed, it was in accordance therewith ordered that the order to show cause in this behalf issued herein be and hereby is discharged, and that receiver's said application be and hereby is denied.

251 *Mandate of United States Circuit Court of Appeals.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the
[SEAL.] Northern District of California, Greeting:

Whereas, lately in the Circuit Court of the United States for the Northern District of California, before you, or some of you, in a cause between Atlantic Trust Company, complainant, and The Woodbridge Canal and Irrigation Company et al., defendants, No. 11,950, a decree was duly filed and entered on the 11th day of March, 1901, in favor of the said complainant and against the said defendant, which said decree is of record in the said cause in the office of the clerk of the said Circuit Court (to which record reference is hereby made and the same is hereby expressly made a part hereof), as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the act of Congress in such cases made and provided, fully and at large appears:

And whereas, on the 23d day of May, in the year of our Lord one thousand nine hundred and two, the said cause came on to be heard before the said Circuit Court of Appeals, on the said transcript of record, and was duly submitted:

252 On consideration whereof, it is now ordered, adjudged and decreed by this Court, that the order or decree of the said Circuit Court in this cause be, and the same is hereby, reversed, with costs, and cause is remanded for further proceedings not inconsistent with the opinion of this Court.

Nov. 10, 1902.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in accordance with the opinion and decree of this Court, as according to right and justice and the laws of the United States ought to be had, the said decree of said Circuit Court notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of February, in the year of our Lord one thousand nine hundred and three.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Costs of Appellants.

Transcript, paid clerk below	$26.35
Clerk U. S. Circuit Court of Appeals	33.65
Printing record	81.25
Attorney's docket fee	20.00
Taxed at	$161.25

F. D. MONCKTON, *Clerk.*

253 [Endorsed:] Filed and spread upon Minutes U. S. Circuit Court, Northern District of California, April 10, 1903. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

ATLANTIC TRUST COMPANY,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, ET AL., ETC., E. C. CHAPMAN, Receiver.

Affidavit for Order Extending Time to file Answer.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

J. J. Scrivner, being duly sworn, deposes and says: That he is the attorney of record in the matter of the application of E. C. Chapman, receiver herein for additional compensation and for other purposes; that as affiant is informed and believes, Stanley W. Dexter, of New York City, is the regular attorney and counselor of the Atlantic Trust Company, complainant, and has heretofore been advising and directing the defense of said motion; that on the 24th day of February, 1903, the Supreme Court of the United States denied the application of complainant for a writ of certiorari; that said Stanley W. Dexter

desires to prepare the answer in the case, and has been proceed-
254 ing as rapidly as possible to get the data together to prepare the same to the order to show cause herein; that only a few days ago affiant forwarded to said Dexter a part of the papers in said case in order to prepare said answer, and is to forward the remainder of the papers and records which said Dexter requires in preparing said answer.

That the attorneys for the petitioner have extended the time for complainant to file its answer until April 1st, 1903; that affiant is advised by said Dexter that it is impossible for him to get the answer ready and forwarded here by April 1st, 1903, and that he desires fifteen days further time in order that he may have ample time to get the paper together to prepare said answer.

Wherefore, affiant respectfully asks the Court to make an order extending the time to file such answer until April 15th, 1903; and further, affiant saith not.

J. J. SCRIVNER.

Subscribed and sworn to before me this 18th day of March, 1903.

[SEAL.] D. B. RICHARDS,
Notary Public in and for the City and County of San Francisco.

Order Extending Time to File Answer.

Upon reading and filing the foregoing affidavit of J. J. Scrivner, it is hereby ordered that the time within which the complainant is to file its answer to the order to show cause herein be, and
255 the same is hereby, extended to and including the 15th day of April, 1903.

March 20th, 1903.

WM. W. MORROW, *Judge.*

[Endorsed:] Received a copy of the within this 31st day of Mch., 1903. Fox & Gray, Att'ys for Receiver. Filed April 2, 1903. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States for the Ninth Circuit, Northern District of California.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Defendant.

Answer of Complainant to Final Report and Petition of Receiver.

The complainant, The Atlantic Trust Company, a corporation now and at all times hereafter saving to itself all and all manner of benefits or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imper-
256 fections in the final report and petition of Edgar C. Chapman, receiver appointed by the Court in the above-entitled

cause contained, for the answer thereto, or to so much thereof as the complainant is advised it is material or necessary for it to make answer to, answering saith as follows:

First.

This complainant has no knowledge, information or belief whether from the date of the decree of foreclosure herein to the date of sale and the confirmation thereof and the issue of certificate of sale thereunder, it was or was not necessary that said receiver should and did remain in full and absolute charge and possession of said mortgaged property, and whether or not it was necessary to give and he did give the matter his personal attention from time to time, and to make visits of inspection to said property, and whether or not it was necessary during the whole of that time, in order to preserve the property, franchises and water rights, to keep and he did keep two men employed at a cost of $900 each, or at any other cost, and whether or not he necessarily incurred other expenses in the care and management of said property during said period or as to whether or not it was necessary for him to consult counsel upon questions of law in the conduct and management of the business and incur expense therefor. And this complainant avers that if such expenses were necessarily and properly incurred, they were incurred at the request of the receiver, upon the credit of the property of the defendant Woodbridge Canal and Irrigation Com-
257 pany solely and payable solely from the said property or the proceeds thereof, and not on the credit of this complainant nor at its request, and neither this complainant nor the said receiver is personally liable for their payment. And this complainant avers that this Court is without jurisdiction to make or enter any judgment against this complainant for the same or any part thereof.

Second.

This complainant further answering, denies that there is any sum due to said receiver, or his counsel, for their respective services for the period of twelve months from the date of the last report of said receiver nor that there should be added such reasonable sum as the Court shall deem to be just for such services; and this complainant avers that the compensation to the said receiver and to his said counsel was fixed and adjudicated by this Court in the final decree of foreclosure and sale made and entered herein on the 18th day of September, 1897, which has been paid as more fully appears by the report of the clerk filed herein on the 7th day of September, 1898, and that said compensation was fixed and determined by this Court to be in full settlement of all claims of said receiver and his counsel for services in this cause, rendered or to be rendered; and this complainant avers that all such compensation is finally adjudicated by said final decree and is *res adjudicata*, and was made payable by said decree only out of the property of the defendant, and this Court has no jurisdiction to allow any additional compensation,
258 nor to make any order, judgment or decree ordering or adjudging that this complainant pay the same or any part thereof.

Third.

This complainant further answering, admits that it appears from the report of the clerk of this court that there is a deficiency in the amounts found due by the final decree of foreclosure herein, as follows:

Receiver's certificates	$12,282.47
E. C. Chapman, Esq., receiver, for advances made by him, care and management of the property	3,105.72
Time checks issued by receiver	5,728.89
Work done and material furnished for said receiver for which no time checks or certificates have been issued	2,269.85
Making a total of	$23,396.93

That neither the said receiver's certificates nor the time checks issued by said receiver constitute nor purport to constitute any liability on the part of this complainant.

But this complainant denies that of this amount the sum of ten thousand two hundred and sixty-five dollars and fifteen cents ($10,265.15) (being the principal due upon said receiver's certificates), bears interest at the rate of ten per cent. per annum (nor at any other rate) from the date of said decree, and denies that the balance of said several sums bears interest at the rate of seven per cent. per annum (nor at any other rate) from the date of
259 said decree, and avers that all such interest (if any) on all such items was determined up to the date of said decree, and that no further interest is allowable beyond the date of said decree.

And this complainant further denies that each and all of the foregoing items of expenditure and of the several sums of money hereinbefore mentioned are costs and expenses of this court and its officers necessarily incurred in the prosecution of said action, and denies that this complainant is primarily liable therefor, nor in any other wise liable therefor, under the laws of the United States and of the State of California or either of them, or of the rules and practice of this court, and denies that they or any of them were incurred on the motions, or at the request of this complainant, and denies that of right they should have been paid in advance by this complainant, and denies that this complainant gave any assurance whatever that the property against which it was seeking to foreclose was amply sufficient to pay all the costs and expenses so incurred, and the whole amount of the indebtedness for which said action was brought, nor gave any assurance, nor made any representation whatever as to the value of said property, nor that the said receiver in any way relied upon any assurance whatever. But upon the contrary, this complainant avers that the defendant was a quasi public corporation and that all of said expenses were incurred by the receiver as the officer and hand of this Court, and not as the agent of the com-

plainant, in the operation of the canals of the defendant pur-
260 suant to the order of this Court, and were not incurred at the request of nor for the benefit of this complainant, but for the benefit of all concerned, including the public. And this complainant avers that all said items were adjudicated by this Court in and by the final decree of foreclosure entered herein, and made payable by said decree out of the proceeds of the sale of the property only, and not by the complainant personally, nor by any other person, and that the said final judgment of foreclosure is *res adjudicata* as to the method of payment of said items, and this Court has no jurisdiction to make any further order, judgment or decree with reference thereto, nor to make any order, judgment or decree ordering or adjudging that this complainant pay the same or any portion thereof.

Fourth.

This complainant further answering the final report and petition of said receiver, which purports to set out other, further and different reasons why this complainant should be compelled to pay all the costs and expenses of the court and its officers and receiver herein, admits that it is the trustee mentioned in a certain mortgage or deed of trust made by the defendant, Woodbridge Canal and Irrigation Company, bearing date the 17th day of July 1891, a copy of which is attached to the bill of complaint in this cause, and is here referred to as if made a part of this answer. But this complainant denies that said mortgage or deed of trust is fully or correctly set forth in the report and petition of the receiver herein.

261 And this complainant denies that up to September 28, 1894, the said Woodbridge Canal and Irrigation Company had never in fact sold any of said bonds, and denies that the title to the same still remained in said corporate defendant; and denies that at said date the said corporate defendant had hypothecated the majority of said bonds as set forth in said report and petition of the receiver as collateral security to the holders of its notes and to other creditors, but avers that long prior to said last-mentioned date, the majority of said bonds, to wit, sixty-six in number, of the par value of $1,000 each, were duly issued and sold by said corporate defendant to sundry *bona fide* holders thereof for money actually paid therefor and for labor done for and property actually received by said defendant, and twenty-six only of said bonds were prior to said last-mentioned date duly hypothecated to sundry creditors of said corporate defendant as collateral security for work, labor and material furnished. And this complainant avers that this Court has found and adjudged in the final decree of foreclosure herein that the said Woodbridge Canal and Irrigation Company had sold said bonds as aforesaid, being more than a majority thereof, and had duly hypothecated the balance thereof as aforesaid, and that said bonds were lawfully issued, outstanding and unpaid, and that the said mortgage or deed of trust constitutes a valid mortgage and lien upon all the property of said defendant therein described, as security for the payment of

so many of said bonds as were lawfully issued and remained
262 outstanding and unpaid; and such finding and decree are final upon said subject and all the facts and circumstances in relation thereto were fully before the Court before said finding and decree were made, and that said finding and decree are *res adjudicata* as to all questions therein.

Fifth.

This complainant further answering the said final report and petition, denies that on the 28th day of September, 1894, at a meeting of the board of directors of said corporate defendant, they authorized the sale and exchange of said bonds alleged to have been so hypothecated with the parties holding the same as collateral security; and denies that no notification of defalcation on the payment of interest on said bonds was ever given by the holders thereof to the complainant prior to the commencement of this action and denies that no request in writing or otherwise was ever made to the said complainant by the holders of bonds secured by said mortgage that the same be foreclosed and denies that it acted collusively with the corporate defendant to keep the property in court, and denies that it involved the court and its officers and receivers in all the expenses aforesaid, or that its action in the premises was in anywise fraudulent or collusive, and denies that any fraud was practiced upon the court or upon its officers, or that the complainant is in anywise liable in law or equity for the payment of said expenses.

On the contrary, this complainant avers that it at all times acted
in entire good faith for the protection of the rights of the
263 bondholders and in precise accordance with the terms of the said mortgage or deed of trust, and that each and every act performed by the complainant herein has been done and performed by it in the execution of the trust created by said mortgage or deed of trust, and that it has well and faithfully performed its trust and is not otherwise interested in this litigation, except as trustee for the holders of the bonds lawfully issued under said deed of trust.

And this complainant further avers that the holders of the outstanding bonds did present to this complainant the coupons falling due on September 1, 1894, and did demand payment thereof, and that the corporate defendant did make default in the payment of the interest on said bonds which became due and payable on September 1, 1894, and that the corporate defendant did thereafter duly waive all conditions and provisions specified in Article Fifth of the said mortgage, as conditions precedent to the enforcement of the lien created by said mortgage and that the holders of a majority of said outstanding bonds did request in writing this complainant to commence this action and did in writing express their election and option that the whole principal sum mentioned in each and all of said outstanding bonds should forthwith become due and payable, and this complainant did lawfully commence this action pursuant to the terms of the said mortgage or deed of trust, and upon the application of this complainant, this Court did on the 3d day of Oc-

tober, 1893, duly appoint Edgar C. Chapman, as receiver
264 herein.

And this complainant further avers that all the facts in relation to the issue of said bonds and the regularity and propriety of this complainant's proceedings herein were fully set out in its bill of complaint, and amended bill of complaint herein, as will more fully appear by reference thereto, on the files of this court, and this Court did by its final decree of foreclosure find said facts to be true and did adjudge that this action was properly brought and that this complainant did rightfully maintain said action and did enter judgment in all respects favorable to this complainant's demand, all of which is rendered *res adjudicata* in this court, and the receiver is estopped from questioning the regularity of these proceedings to which he owes his own appointment.

And this complainant again avers that the said judgment of foreclosure was a final adjudication in respect to all matters and things therein, and that this Court is now without jurisdiction to make or enter any judgment against this complainant for any sum whatever.

Sixth.

And further answering the petition, the complainant begs to refer to the original bill of complaint filed herein October 3, 1894, and verified by Charles P. Eells, Esq., its solicitor, in Subdivision 6, whereof the default in payment of interest on September 1, 1894, and the resolution of the board of directors of the Woodbridge Canal and Irrigation Company of October 1, 1894, declaring the inability of said company to pay further interest and waiving the
265 conditions and provisions the Fifth Article of the mortgage and requesting immediate foreclosure of said mortgage are set forth. Upon this bill of complaint the petitioner E. C. Chapman was appointed receiver of said Woodbridge Company. The order appointing him such receiver was filed herein October 3, 1894, and refers to said bill of complaint as containing the evidence upon which the said affidavit was based, and recites that the defendant Woodbridge company was present by its counsel and consented thereto. The petitioner thus received at the very moment of his appointment complete information as to the circumstances under which the foreclosure suit was instituted and the receivership constituted.

And further answering the allegations of the petition to the effect that this complainant having "commenced this action and procured the appointment of a receiver, as aforesaid, with an order of Court to manage and carry on the property as a going concern * * * kept the property in court and manage- it, as aforesaid, for three years before it took its decree of foreclosure," complainant begs to refer to the clerk's docket of the proceedings in this suit and to the various proceedings on file herein, which show the falseness of the charge that the delay in the suit was due to this complainant. As appears from said docket of proceedings, the delays were mainly due to various interventions, which raised questions requiring extended

investigation into questions of fact and arguments upon questions of law, which were taken under advisement by the Courts for
266 considerable periods of time and as to which ultimately this complainant was in part and certain of said interveners were in part successful.

The original bill of complaint herein was filed as aforesaid October 3, 1894. The first bill of intervention was filed herein by R. B. Salisbury and others December 10, 1894. This complainant demurred to said complaint, which demurrer was sustained in part and overruled in part by order entered August 6, 1895, and the interveners were given leave to reform their bill of complaint in accordance with the decision. On September 9, 1895, six of said interveners filed a reformed bill of complaint and at a later period the others of said interveners filed petitions for orders preferring them to this complainant. On December 16, 1895, this complainant was permitted to amend its complaint and at the same time to demur to the said reformed bill of complaint of interveners and to the petitions of said other interveners for a preference. On March 5, 1896, a rule was entered taking said amended bill of complaint of this complainant *pro confesso* and on March 6, the said demurrers to the claims of the interveners were argued and submitted. The decision of the Court thereon was not entered until January, 1897. It is reported at 79 Federal Reporter, 39, to which report this complainant begs to refer.

Thereafter, the allegations of fact in said reformed bill of complaint and petitions having been fully investigated, stipulations as to said facts were filed in May, 1897. The questions raised
267 by the facts so stipulated were thereupon fully argued and the decision of the Court thereon disallowing the claims set forth in said reformed bill of complaint in intervention and allowing a part only of the claims set forth in said petitions, is to be found described in the opinion rendered upon application for a final decree herein reported at 86 Federal Reporter, 975, to which this complainant begs to refer.

The next petition in intervention was that of William C. Pidge for work and labor as civil engineer, verified and filed February 4, 1895. This case was argued on or about February 18, 1895, by way of demurrer to the petition, and briefs thereon were filed during March, 1895. The case was decided in favor of Pidge on or about June 24, 1895, but the Court, as the complainant is informed and believes, declined to sign a separate decree thereon in his favor on the ground that this complainant might desire to appeal, and that the question should, therefore, be left for incorporation in the final decree in the suit. The merits of the Pidge case were reargued preparatory to the entry of a final decree as appears by the opinion thereon (86 Fed. Rep. 975), to which this complainant begs to refer. Examination of the petition of Pidge will show that upon the principles laid down in the decisions aforesaid the questions raised in this case were close and difficult.

Some time after the argument upon the demurrers to the re-

formed bill of complaint and intervening petitions upon the intervention first aforesaid, and on or about March 25, 1896, this complainant's solicitors were served with a petition by P. A.
268 Buell and Company and others claiming to be holders of twenty-six bonds secured by the mortgage upon which this suit was based, which petition prayed leave to intervene and share in the benefits of the foreclosure. The legality of these twenty-six bonds was disputed by this complainant. On or about June 12, 1896, an order was granted permitting said Buell's petition to be filed, and the petition was filed accordingly. On account of certain objections raised by this complainant, said corporation, P. A. Buell and Company, thereafter and in June, 1896, sold a portion of said bonds (which had theretofore been held by said corporation as collateral security for certain notes of the defendant Woodbridge Company) at public auction and bought them in upon said sale, and thereafter and on or about November 19, 1896, a stipulation of facts involved in said petition was made and filed, and shortly thereafter the questions raised by said stipulation were argued, resulting in a decision rendered on April 5, 1897, and decree thereon, which sustained in full the twelve bonds that had been held by the corporation of P. A. Buell and Company, subsequently bought in by said corporation, and which as to the fourteen bonds held by interveners (which were still held only as collateral security to promissory notes of the defendant Woodbridge corporation), sustained them to the extent of the advance that had actually been made thereon. The opinion of the Court upon this intervention is reported at 79 Federal Reporter, 842, to which report this complainant begs to refer.

269 While the case of P. A. Buell and Company and other interveners against this complainant and the other parties to the suit was under advisement by the Court and still undecided, two more petitions in intervention were filed.

The first of these petitions was by one John C. Thompson, filed December 11, 1896, praying for specific performance of a contract with the defendant Woodbridge Company evidenced by certain scrip that had been issued to assignors of the petitioner for permanent water rights; or in the alternative for a preference on account of the claims by reason of which said scrip had been issued. Said petition was demurred to by this complainant and by the interveners P. A. Buell and Company and others, and the issues thus raised were argued in January, 1897. Upon the argument the petitioner was allowed time to amend his petition, which he thereupon did by amendments made on or about February 2, 1897. On or about February 18, 1897, the demurrer of this complainant and all said interveners to the amended petition of said Thompson was argued and submitted. On or about March 15, 1897, the demurrer was sustained, as appears by the opinion reported at 79 Federal Reporter, 501, to which report complainant begs leave to refer; and further time was allowed to said Thompson to amend the petition. The petition having been thereafter amended, demurrer and answer were filed thereto. The case was thereafter argued and the

demurrers sustained by the Court, as appears by the opinion
270 on final decree as reported at 86 Federal Reporter, 975.

On or about February 24, 1897, a petition in intervention was filed by one F. C. McClelland, which petition was thereafter demurred to and subsequently a stipulation of facts was entered into in relation to this case. Said petition was sustained by said opinion on final decree as reported as 86 Federal Reporter, 975.

Finally, on or about June 25, 1897, a petition was filed by one J. N. Castle, praying for specific performance of a contract for conveyance of water rights. The question raised by said petition was sustained by said opinion on final decree as reported at 86 Federal Reporter, 975.

Examination of the clerk's docket will show that the delays in this case, which resulted in the lapse of nearly three years between the filing of the original bill of complaint and the entry of the final decree were almost entirely due to the interposition of these various bills of complaint and the petitions in intervention and that these delays thus caused without fault on the part of this complainant caused the expenses of the receivership, which expenses could have been avoided only by an order of the court directing the immediate sale of the property in the hands of the receiver and depositing the proceeds of said sale to await the final decree in the suit—a measure whose advisability did not suggest itself to anybody until after the disastrous flood of July, 1896, hereinafter mentioned, and which
then, when a motion to that effect was made by the receiver,
271 seemed unnecessary in view of the fact that a very early termination of the suit by a final decree was expected.

So far as the unfortunate result of the receivership was not due to unforeseen disasters caused by the elements and by unknown defects in the construction of the main dam, and so far as they could have been discerned by human foresight, the main responsibility must rest with this petitioner, the receiver appointed by the Court, who was in possession of the property, was personally familiar with its care and management and was privileged to receive the constant advice of the Court.

The order appointing said petitioner receiver, to which order this complainant begs to refer, provided that he should, as soon as possible, make and file an inventory of the property of the defendant Woodbridge company; should continue the operation of the works of said company; and should keep full accounts, holding all moneys in his hands subject to the order of the Court. Within three months after his appointment and on or about December 29, 1894, the receiver filed his first report verified December 26. It appears therefrom that on October 4, 1894, the day after his appointment, he visited the works of the defendant Woodbridge company, and that he was there placed in charge and possession of the same by the superintendent; that he took charge thereof through a bookkeeper who was employed for over a month by him and rendered to him statements of the affairs of the company; and that thereafter he remained in charge through the superintendent, employing also other

agents and workmen. He was well aware of the narrow cir-
272 cumstances of the company, his reports showing that it had only $82.30 cash to its credit and that all of the cash which he received up to the day of the report was $875.75, which was less by $27.93 than the amount expended by him during said period. This complainant begs to refer especially to Exhibit "A" annexed to said report, being the final balance of the company as found by its bookkeeper. In said report said receiver petitioned for leave to issue receiver's certificates, and his petition was in part granted by order of January 23, 1895. It permitted the issuance of certificates bearing interest at the rate of not over 8% per annum.

On or about January 31, 1895, the second report of the receiver was filed, bearing date January 30, 1895, to which report this complainant begs to refer. It states that he has been unable to raise the money authorized by the order; that he was then actually indebted in the sum of $1,700 for work and labor; that there were outstanding about $20,000 of time certificates given by the defendant Woodbridge company for work, labor and material furnished prior to his appointment; that the men threatened to leave work, in which case the receiver would be entirely unable to manage and care for the said property to protect it from damage or loss, or to preserve the title of the water rights; that no further money had come into his hands as receiver and that there was nothing outstanding upon which he could make collections, everything available having been hypothe-
273 cated before his appointment; and that he knew of no source of income available prior to the next June or July.

Upon this report this complainant consenting and the defendant not objecting, the receiver was authorized to borrow the sum prayed by him, namely: $5,000 upon receiver's certificates bearing interest at not over 10% per annum.

The next report of the receiver, to which also this complainant begs to refer, is dated August 13, 1896, and was filed on or about said date. It appears by said report that on July 23, 1895, without any warning or means of prevention, the river undermined the easterly portion of a large wooden dam of the company, located at Woodbridge, and carried away its east abutment, causing the river to change its channel and flow over the ground formerly occupied by said abutment, carrying away 10,000 cubic yards of earth which formerly constituted the easterly bank of the river, washing out the sheet piling in front of the dam for a distance of 120 feet, and displacing many of the heavy timbers supporting the large wooden front apron. It further appears from said report that he had been unable to raise money on the receiver's certificates authorized as aforesaid without personally guaranteeing the amount of same (which he does not claim to have done); that, however, he obtained money for repairs on the dam from the principal patrons of the company on condition that he should give them receiver's receipts for said money and employ an engineer named by them, the afore-
said Pidge; that under his direction and at an additional ex-
274 pense of about $5,000, the dam was finally repaired; but that on July 26, 1896, it was again undermined at the same place.

It further appears that from the time of the first repairs, on or about November, 1895, the engineer in charge thought that it would be impossible for the river to undermine the dam again, as he claimed that the sheet piling was driven far down into a bed of blue clay, which was supposed to form the bed of the river; but that his opinion was incorrect, and that the general opinion of civil engineers that there was a well defined bed of clay in the bed of the river at the place where the dam was constructed was wholly or partly unfounded, so that it would be necessary thereafter to make repairs on the theory that there was no bed of blue clay under the river. It further appears from said report that immediate repairs were necessary; that no further funds could be raised on the receiver's certificates; that the property, if offered for sale, would not in the receiver's judgment in its present condition bring anything near its worth, although it would be likely to depreciate in value if left in its present condition, and that the water of the river had not gone down sufficiently as yet to enable the men to estimate upon the necessary repairs.

Upon said report the petitioner through his counsel moved for leave to sell the property, pay the expenses out of the proceeds and bring the balance of the proceeds into court to await the final determination of the Court. Said application was originally noticed for August 24, 1896, and adjourned from time to time until
275 November 19, 1896, when an order was entered upon consent of this complainant authorizing an issue of receiver's certificates to the amount of $2,500 bearing interest at a rate not exceeding ten per cent. per annum. At this time the amended bill of complaint had been taken *pro confesso*. The facts in relation to the Buell intervention had been stipulated and that case was about to be submitted to the Court, while the decision of the Court upon the other pending interventions was immediately expected, the intervention proceedings of Messrs. Thompson and McClelland not having been commenced. On or about August 10, 1897, a further report of the receiver verified June 17, 1897, was filed, to which report also this complainant begs leave to refer. It appears therefrom that upon taking charge as receiver he had made a full and careful examination of all the properties and ascertained the condition thereof and that the report which had been filed by him on December 26, 1894, is a full and complete statement of the result of his investigations. As said report contained no statement or hint of the dangerous condition of the dam, which at a later date caused the disastrous result of the receivership, it is properly inferable that this result was not due in any way to this complainant, who was obliged to rely and did rely upon the receiver for information as to the condition of the property, but as above stated is chargeable (if to anybody) to the receiver himself, for insufficient investigation. In said report it appears that under the order of February 15, 1895, receiver's certificates to the amount of nearly $5,000 (the
276 amount allowed in said order as aforesaid) were issued at various dates, commencing April 2, 1895, and prior to January 31, 1896. It further appears from Exhibit "B" annexed to said

report, to which complainant begs to refer, that a large amount of certificates apparently unauthorized by any order of the court were issued on January 31st, and at various dates in February, 1896, and that the $2,500 in certificates authorized by the order of November 9, 1896, were issued on November 27th. It further appears by said report that the receiver's certificates issued without prior authority from the Court aforesaid, together with a portion of those issued under the pretended authority of February 15, 1895, were actually issued not for cash but for labor performed by the farmers in the vicinity. It further appears from this report that prior to making the repairs to the dam in the fall of 1895, said petitioner, the receiver, had learned that for a long time before his appointment the dam had been a subject of almost constant repair and expense to the company, due to the formation of the river generally causing destructive accumulations of drift producing great and unnecessary pressure upon the dam which during said repairs the petitioner relieved; so that the subsequent misfortune of July 26, 1896, was due to other and different causes growing out of the defective causes in the original risk; and that the reason why no definite action was taken under his report of this disaster was that he anticipated an early and final decree in the court. It further appears from this report that
277 the total amount of cash ever received by the petitioner growing out of receiver's certificates was $4,350, although the total amount of certificates issued was $10,265.15, although the receiver was not authorized to issue receiver's certificates except for cash, and their issuance for any other consideration was illegal.

Seventh.

And further answering said petition this complainant shows to the Court, that as appears from the record of this suit the final decree of foreclosure and sale herein was duly entered September 18, 1897; that after finding the various allowances to be made to the receiver and his counsel and to holders of receiver's certificates and time checks and to laborers and materialmen and to solicitors for the complainant and certain interveners in the case, and after fixing the amount due and applicable upon the various bonds secured by the mortgage, and after containing the usual provisions for a sale of the property, payment of preferred claims out of the proceeds of said sale and payment of balance of said proceeds, if any, into court, and due report of sale, and after providing for the recovery of costs by complainant from certain interveners, the decree closes with the following clause, which is the only clause reserving any questions for the future determination of the Court, to wit: "This decree is given and made subject to modification by the Court at any time before final confirmation of sale, as to the upset or minimum price at which said sale may be made, and also as to the manner of sale
278 of personal property or choses in action or securities thereunder; and subject to the right of the court at any time before the sale to authorize the withdrawal of choses in action and securities from sale and the settlement, compromise and cancellation thereof."

And in particular said decree contains no provision or reservation permitting the Court thereafter to enter a personal judgment against this complainant for any part of the compensation or expenses of the receiver or his counsel, past or future, or for any part of the receiver's certificates or time checks, or for any of the persons performing work or furnishing material, past or future, for said receiver, and this complainant avers and submits to the Court that the Court has no jurisdiction as long as said decree remains unopened to enter any order or decree *in personam* against this complainant directing it to pay any part of the fees, expenses, certificates, time checks or other obligations aforesaid.

Eighth.

And this complainant further shows that by reason of the final decree of foreclosure and sale herein entered September 18, 1897, it is adjudicated as between the petitioner, the receiver, and this complainant and all other persons interested, that the aforesaid fees, expenses, certificates, time checks or other obligations are not personally chargeable against this complainant, but collectible only out of the property under foreclosure.

Ninth.

279 And this complainant further shows that the holders of the receiver's certificates and time checks and the persons who have done work and furnished material to said receiver, as this complainant is informed and believes, have not been cited as parties to the proceeding instituted by said petition of the receiver and would therefore not be bound by any order or decree entered upon said petition, and that the receiver is not interested in their claims and has no equity based upon them, and that for this reason and because the rights of all of said persons were foreclosed and adjudicated by said decree of September 18, 1897, as aforesaid, and no further jurisdiction in the matter was reserved, this Court is without jurisdiction to enter any decree or order directing any portion of their claims to be paid by this complainant in this proceeding.

Tenth.

And this complainant further shows that it is without knowledge or information as to the names of the present owners and holders of any of said certificates, time checks or claims for labor done or materials furnished for the receiver, but that it avers and submits to the Court that said persons and all of them are necessary parties to this proceeding, and in their absence no relief can be given as to any of their claims, and the petitioner, said receiver, has no interest therein (except so far as he may be assignee of any of them, as to which this complainant has no knowledge or information), and the Court is without jurisdiction to grant any such relief.

280 Eleventh.

And this complainant further shows that it is a corporation enjoying very high credit in the commercial community all over the United States, and that, had it been stated or believed by the persons taking said receiver's certificates, or any of them, that this complainant was personally liable upon them, either primarily or secondarily, they would have been rapidly subscribed to at a low rate of interest instead of being put out with great difficulty at an interest of ten per cent. per annum, and that by their own terms they are a liability of the property only; and that it would be grossly inequitable to this complainant to permit a personal recovery against it under these circumstances, and as this complainant is informed and believes that said certificates, time checks and other claims, or a great part thereof, have since the decree been sold at great discount and are now held by persons other than the original holders, and it would be inequitable, if any recovery was allowed upon them, to allow the recovery of more than the sums paid therefor by the present owners, with legal interest.

Twelfth.

And this complainant further shows that neither the receiver nor his counsel nor any of the holders of said certificates, time checks or claims gave notice to this complainant of any claim of personal liability on the part of the complainant for any of the matters set forth in this petition until the filing thereof, nor has any per-
281 son up to this date given such notice except the receiver and his counsel; and that by reason of such silence on their part this complainant permitted said claims to be adjudicated by said decree of September 18, 1897, without the opposition which would have been made had any claim of personal liability been raised, and in particular permitted the illegal and unauthorized receiver's certificates hereinbefore described to be confirmed by said decree and took no appeal from the decree in that regard; and that this petitioner, the receiver, as this complainant is informed and believes, applied for no order to show cause upon the claims presented in his petition until November 18, 1899, after the time to appeal from said decree had elapsed and after the time to redeem the property from the sale under said decree (upon which sale said property was purchased for the benefit of said receiver and his counsel) had also elapsed, and this complainant avers and submits to this Court that the claims presented against it by said petition of the receiver are barred by his laches and inequitable conduct in the premises.

Thirteenth.

And this complainant further shows that it has had no beneficial interest in the subject of this suit, but has acted merely as trustee for the bondholders and that it is inequitable to subject it to any of the expenses incurred by the receiver in the suit, and that the persons, if any, who could properly be subjected to contribution for any of such expenses are the holders of the various bonds secured by the

mortgage foreclosed herein and for whose benefit this suit was
282 commenced, including the intervening bondholders. The names of said owners and holders, as this complainant is informed and believes, being as follows: P. A. Buell & Co., Eaton, Newell & Buckley, Louis Epstein & Co., Fresno National Bank, Stockton Lumber Company, Kutner, Goldstein & Co., Bank of Central California, J. J. Swain, H. Bently, Francis Cogswell, Stanley W. Dexter. And this complainant avers and submits to this Court that all of said bondholders should be cited and made parties to the hearing upon this petition, and that there is a defect of parties because they are not before the Court.

Fourteenth.

For further answer and objection to the said report and petition this complainant shows that it is a corporation organized under the laws of New York for the purpose of accepting and executing all lawful trusts, and as such, accepted from the corporate defendant a deed of all its canal system and its property, in trust, nevertheless, for the use and benefit of any and all persons or corporations who should thereafter at any time become the purchasers, holders or owners of any of said bonds, subject to the possession and management of said canal system and property by said company so long as no default should be made in the payment of said bonds.

And this complainant avers that at all times in the exercise of the powers conferred upon it by said deed of trust and in the conduct of this suit and in the employ of attorneys and agents, it has acted in
good faith in regard thereto and without any negligence, de-
283 fault or misconduct upon its part, and that each and every act has been done and performed by it, in pursuance of the discretionary powers conferred upon it by said deed of trust, and in the course of the execution of its said trust and that it has well and faithfully performed its said trust and has not failed in the execution of any of its duties under said trust.

And this complainant further avers under the terms of said deed of trust and the law and practice of this court, it incurred no personal liability in exercising or declining to exercise its discretionary powers—except to the extent of the funds or property held by it as trustee for the use and benefit of the bondholders—and that such property has been sold by this court under the final judgment herein and no fund or proceeds have come into the possession of this complainant as trustee, and this complainant has no funds or property in its possession applicable to the payment of the costs and expenses set forth in the receiver's final report and petition.

Wherefore this complainant submits to this Honorable Court that all and every of the matters in the said final report and petition of the receiver are matters with respect to which the said receiver is not entitled to any relief from a court of equity, and this complainant hopes that it shall have the same benefit of this defense as if it had demurred to the said petition and report; and this complainant denies all and all manner of fraud, collusion, unlawful combination and confederacy wherewith he is by the said report and petition charged,

without this, that there is any other matter, cause or thing
284 in said petition and report contained, material or necessary for this complainant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge and belief of this complainant; all which matters and things this complainant is hereby ready and willing to aver, maintain, and prove, as this Honorable Court shall direct; and humbly prays to be hence dismissed with its reasonable costs and charges, in this behalf most wrongfully sustained.

[SEAL.] ATLANTIC TRUST CO.,
By BENJAMIN STRONG, JR., *Secretary.*
J. J. SCRIVNER,
Solicitor for Complainant.

J. J. SCRIVNER,
Of Counsel for Complainant.

SOUTHERN DISTRICT OF NEW YORK,
State of New York, City and County of New York, ss:

Benjamin Strong, Jr., being duly sworn, says that he resides in Englewood, New Jersey, and is the secretary of the Atlantic Trust Company, the complainant herein; that he has read the fore-
285 going answer and knows the contents thereof and that the same is true of his own knowledge, except so far as the same are stated to be on information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by complainant is that it is a corporation; that deponent is an officer of the same, to wit, secretary thereof.

BENJAMIN STRONG, JR.

Sworn to before me this 8th day of April, 1903.

[SEAL.] STANLEY W. DEXTER,
Notary Public, New York County.

[Endorsed:] Received a Copy of the within Answer, this 14th day of April, 1903. Fox & Gray Attorneys for Receiver. Filed April 14th 1903. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

286 In the Circuit Court of the United States, for the Ninth Judicial Circuit, in and for the Northern District of California.

No. 11950.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION CO. ET AL., etc., Defendants.

Notice of Motion to Strike from Files Receiver's Motion to Strike Out Complainant's Answer, etc.

To the Above-named Defendant and E. C. Chapman, Receiver, and to Fox & Gray, Attorneys for said Receiver:

You will please take notice, that on Monday, the twelfth day of October, 1903, at ten o'clock A. M. of that day or as soon thereafter as counsel can be heard, at the courtroom of said court in the Appraisers' Building, in the city and county of San Francisco, State of California, the said complainant will move the said Court to strike from the files of said court, the motion and notice of motion to strike out the answer of said complainant to the petition or complaint of said receiver, which said notice and motion was made and filed herein on the twenty-seventh day of April, 1903, upon the grounds, to wit:

1. That the motion to strike out an answer is unknown to the equity practice of this court and the court is without jurisdic-
287 tion to grant a motion striking out the answer in this cause.

2. That the sufficiency of an answer cannot be tested upon a motion to strike out, or demurrer, or in any other manner except to have the cause set down for hearing upon complaint and answer, or by exceptions thereto filed according to the equity rules of this court. Said motion will be made upon the petition or complaint of said E. C. Chapman, filed herein and upon the said answer and the said motion and notice of motion to strike out said answer. And said complainant asks that said cause be now heard as upon bill and answer, or that said receiver as complainant herein be now required to file his replication to said answer, and that the cause thereafter proved according to the equity rules and practice of this Court.

Dated October 7th, 1903.

J. J. SCRIVNER,
Solicitor for Complainant.

[Endorsed:] Received a Copy of the within Notice this 7th day of October, 1903. Fox & Gray, Att'ys for Receiver. Filed October 7th, 1903. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

288 At a stated term, to wit, the November Term, A. D. 1903, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the court room in the city and county of San Francisco, on Monday, the 16th day of November, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William W. Morrow, Circuit Judge.

No. 11950.

THE ATLANTIC TRUST COMPANY
vs.
WOODBRIDGE CANAL AND IRRIGATION CO.

Order Denying Receiver's Motion to Strike Out Answer and Complainant's Motion to Strike Out Receiver's said Motion, etc.

The receiver's motion to strike out the answer of complainant to final report and petition of receiver, and complainant's motion to strike out said motion of receiver herein, came on this day to be heard and having been argued by the solicitors for the respective parties, and considered by the Court, it is ordered that said motions and each of them be and hereby is denied. It is further ordered that the solicitor for receiver have ten days from this date within which to file replication to said answer of complainant to receiver's petition, move for decree upon pleadings, or for an order of reference to the master.

289 At a stated term, to wit, the November Term, A. D. 1903, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Monday, the 23d day of November, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William W. Morrow, Circuit Judge.

No. 11950.

ATLANTIC TRUST CO.
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY.

Order of Court Submitting Receiver's Petition on Petition and Answer and Briefs to be Filed.

By consent it is ordered that the receiver's *ex parte* motion to submit this cause on the issues joined by the final report and petition of receiver, and complainant's answer thereto, be and is granted; the receiver's solicitor waiving replication to complainant's answer, and complainant's solicitor consenting that this submission be

as upon bill and answer, and that this submission be upon the printed briefs now presented and filed by receiver's solicitor, and brief to be filed by complainant within 20 days, and by receiver in reply within 5 days thereafter.

290 In the Circuit Court of the United States, Ninth Circuit in and for the Northern District of California.

No. 11950.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Defendant.

Judgment and Decree.

In Proceedings Supplementary to Decree of Foreclosure and Decree of Confirmation of Sale under said Foreclosure, had on Final Report and Petition of E. C. Chapman, Esq., Receiver in said Cause, Praying for Settlement of his Final Account, and for the Ascertainment and Determination of the Amount of the Unpaid Balance on Account of Moneys Advanced by said Receiver and on Receiver's Certificates Issued by him as such Under the Order of this Court and Consented to by the Plaintiff in this Cause, and on Time Checks Issued by Him for Work and Labor Done, and for Materials Furnished and Board of Men, etc., all of Which was Allowed and Ordered Paid by this Court in and by the Original Decree of Foreclosure Entered Herein on the 18th day of September, 1897; and also for the Ascertainment and Settlement of the Further Amount due to said Receiver on Account of Further Advances Made by him, and Further Expenses and Liabili-
291 ties Incurred for Work and Labor Performed for him after the said Decree of Foreclosure, and While the Mortgaged Property Still Remained in his Charge and Under his Care as Such Receiver; and Praying that Judgment be Given and Made and Entered Herein, Against the Atlantic Trust Company, the Plaintiff in This Cause, at whose Instance and on Whose Motion the Said Receiver was Appointed and Expenses Incurred, for the Full Amount of the Balance so Ascertained and Determined to be Due and Unpaid, the Same to be Paid into Court and Distributed to the Several Parties or Persons Entitled Thereto as the Court Should Direct.

This cause having heretofore been heard upon the supplementary proceedings above mentioned, upon the report and petition of the said E. C. Chapman, receiver, and the demurrer of plaintiff thereto, and this Court having on the 11th day of March, 1901, sustained such demurrer and denied the prayer and application of said petitioner, on the ground that the Court had no jurisdiction to grant the relief prayed, from which decision and judgment of the Court an

appeal was in due course taken to the Circuit Court of Appeals in and for the Ninth Judicial Circuit, and in that court having been in due course argued and submitted, and the said Circuit Court of Appeals having subsequently reversed the decision and judgment of this Court thereon, and held and decided "that the complainant is liable for the deficiency shown by the decrees already ren-
292 dered in the cause, and for such further deficiency as may be properly ascertained," and "that upon the settlement of the receiver's account, and the proper ascertainment of such further deficiency, if any, judgment may be entered against the complainant for the aggregate amount thereof: jurisdiction over the cause and of all of the parties having been retained by the Court for that purpose," and having directed that the order of this Court from which the appeal was taken, to wit, the order dismissing the application of the receiver, be "reversed and the cause remanded for further proceedings not inconsistent with this opinion;" and the mandate of said Court of Appeals having been duly and regularly filed in this court; and thereupon the said complainant having made and filed its answer to the report, application and petition of said receiver, and the same having been duly presented, argued and submitted on the report and petition of said receiver, the answer of the complainant thereto, the mandate of the said Circuit Court of Appeals, the records and files of this court in the cause as to all matters pertaining to the question of the amount of and the liability of the Atlantic Trust Company for the deficiency on account of advances made by the receiver, receiver's certificates, and other items of expenses and liabilities which had been ascertained and settled in and by the original decree of foreclosure, and on admissions made in open court and agreed upon in open court as advances made and liabilities incurred by said receiver subsequent to the date of said decree of foreclosure and while the mortgaged property still
293 remained in the charge and care of said receiver, the receiver and his counsel waiving all claim for or on account of services rendered by them or either of them subsequent to said decree. And the Court having duly considered the same it is by the Court now here determined, adjudged and decreed:

(1) That there was, on the 15th day of August, 1898, after the application of the balance remaining in the hands of the clerk of this court out of the proceeds of the sale on that day confirmed by the Court toward the payment of accrued interest, a deficiency on account of receiver's certificates theretofore issued by said receiver in this cause, the principal and accrued interest upon which amounted to the sum of $12,292.47, to which now, according to the terms and conditions of said certificates and the decree of foreclosure entered in this cause on the 18th day of September, 1897, to be added interest on the aggregate of the principal sums named in said certificates, to wit, $10,265.15, at the rate of ten per cent. per annum, from said 15th day of August, 1898, to the date of this decree amounting to $6,074.72, making the aggregate of the deficiency on account of said

receiver's certificates, now remaining due and unpaid the sum of $18,367.19.

(2) That there is also a deficiency, now remaining due and unpaid, on other items allowed and ordered paid in and by the said original decree of foreclosure, the following additional sums, to wit:

To E. C. Chapman, receiver, on account of advances made by him in the care and management of the mortgaged property, the
294 sum of $3,105.72, together with interest thereon from the date of said decree of foreclosure to the date hereof, at the rate of seven per cent. per annum, amounting to $1,419.18, making a total of $4,524.90.

On time checks issued for work and labor, held by divers persons, and allowed in and by the said decree of foreclosure, amounting to the sum of $5,728.89, together with interest thereon from the date of said decree to this date at the rate of seven per cent. per annum, amounting to $2,699.66, aggregating the sum of $8,348.85.

To divers persons for work and labor done, material furnished, and for board of men employed on said work, allowed and ordered paid in and by the said decree of foreclosure, the aggregate sum of $2,269.85, together with interest thereon from the date of said decree to this date, at the rate of seven per cent. per annum, amounting to the sum of $1,039.30 aggregating the sum of $3,309.15.

Making a total amount of the aggregate sum now due and unpaid, of deficiency for and on account of the claims allowed and ordered paid in and by the said original decree of foreclosure, on account of advances made by, and expenses incurred by such receiver, $34,-550.09.

(3) And upon this the final settlement of the accounts of said receiver, it is further ordered, adjudged and decreed that there be allowed to said E. C. Chapman, receiver, for advances made
295 by him in the care and management of the mortgaged property after the decree of foreclosure, and while the same remained in his charge and care, $529.40; F. G. McClelland for services, work and labor, same time, $128.00; J. J. Hinckley, for services rendered during same time, $900.00, making a total deficiency, on the accounts of said receiver, as now and heretofore settled and allowed, $36,207.57.

For all of which, under the law and the facts in this case the plaintiff and complainant herein, the Atlantic Trust Company is liable.

And it is further ordered, adjudged and decreed, that judgment be and the same is hereby given, made and entered, in favor of said E. C. Chapman, receiver in this cause, against the complainant in this cause, The AtAlantic Trust Company, for the said sum of thirty-this cause, The Atlantic Trust Company, for the said sum of thirty-six thousand two hundred and seven 57/100 dollars, $36,207.57, with interest thereon from this date until paid, at the rate of seven per cent. per annum, together with his costs in this supplementary proceeding, taxed at the sum of $ ——, the same to be paid by said complainant into court within 120 days from the date hereof, in lawful money of the United States, and if not so paid then the receiver, said E. C. Chapman, to have execution therefor, for the full

amount of said judgment and costs with interest on the principal sum as above provided, and upon collection thereof the amount so collected to be paid into court, and the clerk of said court to distribute and pay the same over to the several parties entitled thereto,
as shown by the decree of foreclosure entered herein, and by
296 the allowances now herein made upon settlement of final
account, or to their assignees, and upon such payment or collection and payment into court that the said E. C. Chapman be finally discharged as such receiver.

Dated this 30th day of March, 1904.

WM. W. MORROW, *Judge.*

[Endorsed:] Filed and entered March 30, 1904. Southard Hoffman, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., ETC., Respondents.

Stipulation as to Motion to Amend Decree, etc.

It is hereby stipulated and agreed that the motion to amend the decree of March 30th, 1904, made by complainant in the above-entitled cause, and noticed to be heard on the fifth day of July, 1904, be deemed to be, and the same is hereby submitted to the Court for its judgment and decision, and without argument unless argument is
ordered by the Court or judge thereof; said motion to be heard
297 at the next sitting of the Court, or as soon thereafter as counsel can be heard.

It is further stipulated that if the Judge shall grant the motion amending said decree or any portion thereof, that the same as so amended may be engrossed and filed *nunc pro tunc* as of March 30th, 1904.

Dated July 9th, 1904.

J. J. SCRIVNER,
Solicitor for Complainant.
R. S. GRAY,
Surviving Partner of the Firm of Fox & Gray, Solicitor for Respondent and E. C. Chapman, Receiver.

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

No. 11950.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Defendant.

Amended Judgment and Decree.

In proceedings supplementary to decree of foreclosure and decree of confirmation of sale under said foreclosure, had on final report and petition of E. C. Chapman, Esq., receiver in said cause, praying for settlement of his final account, and for the ascertainment and determination of the amount of the unpaid balance on account of
298 moneys advanced by said receiver and on receiver's certificates issued by him as such under the order of this Court and consented to by the plaintiff in this cause, and on time checks issued by him for work and labor done, and for materials furnished and board of men, etc., all of which was allowed and ordered paid by this Court in and by the original decree of foreclosure entered herein on the 18th day of September, 1897, and also for the ascertainment and settlement of the further amount due to said receiver on account of further expenses and liabilities incurred for work and labor performed for him after the said decree of foreclosure, and while the mortgaged property still remained in his charge and under his care as such receiver; and praying that judgment be given and made and entered herein, against the Atlantic Trust Company, the plaintiff in this cause, at whose instance and on whose motion the said receiver was appointed and expenses incurred, for the full amount of the balance so ascertained and determined to be due and unpaid, the same to be paid into court and distributed to the several parties or persons entitled thereto as the Court should direct.

This cause having heretofore been heard upon the supplementary proceeding above mentioned, upon the report and petition of the said E. C. Chapman, receiver, and the demurrer of plaintiff thereto, and this Court having on the 11th day of March 1901, sustained such demurrer and denied the prayer and application of said
299 petitioner, on the ground that the Court had no jurisdiction to grant the relief prayed, from which decision and judgment of the Court an appeal was in due course taken to the Circuit Court of Appeals in and for the Ninth Judicial Circuit, and in the Court having been in due course argued and submitted, and the said Circuit Court of Appeals having subsequently reversed the decision and judgment of this Court thereon, and held and decided "that the complainant is liable for the deficiency shown by the decree already rendered in the cause and for such further deficiency as may be properly ascertained," and "that upon the settlement of the receiver's account, and the proper ascertainment of such further deficiency, if

any, judgment may be rendered against the complainant for the aggregate amount thereof; jurisdiction over the cause and of all of the parties retained by the Court for that purpose," and having directed that the order of this Court from which the appeal was taken, to wit, the order dismissing the application of the receiver, be "reversed and the cause remanded for further proceedings not inconsistent with this opinion," and the mandate of said Court of Appeals having been duly and regularly filed its answer to the report, application and petition of said receiver, and the said receiver having set the cause down for a final hearing upon said petition and answer, and the same having been duly presented, argued and submitted on the report and petition of said receiver, the answer of the
300 complainant thereto, and the mandate of the said Circuit Court of Appeals, and the court upon said hearing having taken judicial notice of the records and files of this court in the cause as to all matters pertaining to the question of the amount of and the liability of the Atlantic Trust Company for the deficiency on account of advances made by the receiver, receiver's certificates and other items of expenses and liabilities which have been ascertained and settled in and by the original decree of foreclosure, the records and files of which judicial notice was thus taken having been the following, to wit, the original and amended bills of complaint herein, the order appointing said receiver, the receiver's reports (excluding the exhibits thereto annexed except as hereinafter recited) of December 29, 1894 (and Exhibit "A" annexed to said report), January 31, 1895, and August 13, 1896, and the orders for issuance of receiver's certificates granted upon said reports respectively, the petition of intervention of P. A. Buell & Company and others, of March 25, 1896, the order allowing said intervention of June 12, 1896, the order allowing the bonds of said interveners of April 5, 1897, the receiver's report of August 10, 1897, and Exhibit "D" thereto annexed, the clerk's docket of the proceedings herein prior to the final decree of foreclosure, on September 18, 1897, said decree, and the decree confirming the same on August 15, 1898; and on admissions made in open court and agreed upon in open court as advance- made and liabilities incurred by said receiver subsequent to the date
301 of said decree of foreclosure and while the mortgaged property still remained i.. ..e charge and care of said receiver, said admissions being that the following items of expenditures and indebtedness contracted and owing by the receiver subsequent to the date of his last report as appears in his final report and petition herein, were and are correct, to wit:

2 men employed for taking care of the property for 12 months	$900.00
Balance due F. C. McClelland for services	128.00
Balance due on account of personal expenses as called for in said petition	529.40
Balance due J. J. Hinckley for services	900.00
Total	$2457.40

—all of which appears in said report.

And the receiver and his counsel, Charles N. Fox, waiving any claim for further or additional compensation for services rendered subsequent to the final decree in the cause, and the Court having duly considered the same it is by the Court now here determined, adjudged and decreed:

(1) That there was, on the 15th day of August, 1898, after the application of the balance remaining in the hands of the clerk of this court out of the proceeds of the sale on that day confirmed by the Court towards the payment of accrued interest, a deficiency on account of receiver's certificates theretofore *is* issued by said receiver in this cause, the principal and accrued interest upon which
302 amounted to the sum of $12,292.47, to which is now, according to the terms and conditions of said certificates and the decree of foreclosure entered in this cause on the 18th day of September, 1897, to be added interest on the aggregate of the principal sums named in said certificates to wit, $10,265.15, at the rate of ten per cent. per annum, from said 15th day of August, 1898, to the date of this decree amounting to $6,074.72. Making the aggregate of the deficiency on account of said receiver's certificates, now remaining due and unpaid, the sum of $18,367.19.

(2) That there is also remaining a deficiency, now remaining due and unpaid, on other items allowed, and ordered paid in and by said original decree of foreclosure the following additional sums, to wit:

To E. C. Chapman, receiver, on account of advances made by him in the care and management of the mortgaged property in the sum of $3,105.72, together with interest thereon from the date of said decree of foreclosure to the date hereof, at the rate of seven per cent. per annum amounting to $1,419.18, making a total of $4,524.90.

On time checks issued for work and labor, held by divers persons, and allowed paid in and by the said decree of foreclosure, amounting to the sum of 5,726.89, together with interest thereon from *that* date of said decree to this date at the rate of seven per cent. per annum, amounting to $2,689.66, aggregating the sum of $8,348.85.

To divers persons for work and labor done, materials furnished and for board of men employed on said work, allowed and
303 ordered paid in and by the said decree of foreclosure, the aggregate sum of $2,269.85, together with interest thereon from the date of said decree of foreclosure to this date at the rate of seven per cent. per annum, amounting to the sum of $1,039.30, aggregating the sum of $3,309.15.

Making a total amount of the aggregate sum now due and unpaid, of deficiency for and on account of the claims allowed and ordered paid in and by the original decree, of foreclosure, on account of advances made by, and expenses incurred by such receiver, $34,-550.09.

And upon this the final settlement of the accounts of said receiver it is further ordered, adjudged and decreed that there be allowed to said E. C. Chapman, Receiver, for advances made by him in the care and management of the mortgaged property after the decree of

foreclosure, and while the same remained in his charge and care, $529.40.

F. G. McClelland, for services, work and labor, same, $1,228.00; J. J. Hinckley, for services rendered during the same, $900.00; making a total deficiency, on accounts of said receiver, as now and heretofore settled and allowed, $36,207.57.

For all of which under the laws and the facts in this case the plaintiff and complainant herein, the Atlantic Trust Company, is liable.

And it is further ordered, adjudged and decreed that judgment be, and the same is hereby, given, made and entered, in favor of said E. C. Chapman, receiver in this cause, against the complain-
304 ant in this cause, The Atlantic Trust Company, for the said sum of thirty-six thousand two hundred and seven 57/100 ($36,207.57), with interest thereon from this date until paid at the rate of seven per cent. per annum together with his costs in this supplementary decree proceeding taxed at the sum of $173.55, the same to be paid by said complainant into court within 120 days from the date hereof, in lawful money of the United States, and if not so paid, then the receiver, said E. C. Chapman, to have execution therefor, for the full amount of said judgment and costs with interest on the principal sum as above provided, and upon collection thereof the amount so collected to be paid into court and the clerk of said court to distribute and pay the same over to the several parties entitled thereto, as shown by the decree of foreclosure entered herein, and by the allowance now herein made upon settlement of payment or collection and payment into court that the said E. C. Chapman be finally discharged as such receiver.

Dated this 27th day of July, 1904, *nunc pro tunc* as of the date of March 30, 1904.

WM. W. MORROW, *Judge.*

[Endorsed:] Filed and entered July 27, 1904, *nunc pro tunc* as of the 30th day of March, 1904. Southard Hoffman, Clerk.

305 At a stated term, to wit, the July Term, A. D. 1904, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Wednesday, the 27th day of July, in the year of our Lord one thousand nine hundred and four.

Present: The Honorable William W. Morrow, Circuit Judge.

No. 11950.

THE ATLANTIC TRUST COMPANY, Complainant,

vs.

WOODBRIDGE CANAL AND IRRIGATION COMPANY, Defendant.

Order Amending Decree Nunc Pro Tunc.

On the application of the above-named complainant, The Atlantic Trust Company, E. C. Chapman, Esq., the receiver of the above-

named defendant herein, appearing and not opposing the same, it is hereby

Ordered and decreed that the decree entered heretofore and at the present term and bearing date the 30th day of March, 1904, be and the same hereby is amended *nunc pro tunc* as of said date.

By inserting after the words "its answer to the report, application and petition of said receiver," the words, "and the said receiver having set the cause down for final hearing upon said petition and answer;" and

306 By inserting before the words "the records and files of this Court in the cause as to all matters pertaining to the question of the amount of and the liability of The Atlantic Trust Company," the words "and the Court upon said hearing having taken judicial notice of;" and

By inserting after the words "which have been ascertained and settled in and by the original decree of foreclosure," the words "the records and files of which judicial notice was thus taken having been the following, to wit, the original and amended bills of complaint herein, the order appointing said receiver, the receiver's reports excluding the exhibits thereto annexed except as hereinafter recited) of December 29, 1894 (and Exhibit "A" annexed to said report), January 31, 1895, and August 13, 1896, and the orders for issuance of receiver's certificates granted upon said reports respectively, the petition of intervention of P. A. Buell & Company and others, of March 25, 1896, the order allowing said intervention, of June 12, 1896, the order allowing the bonds of said interveners of April 5, 1897, the receiver's report of August 10, 1897, and Exhibit "D," thereto annexed, the clerk's docket of the proceedings herein prior to the final decree of foreclosure, on September 18, 1897, said decree, and the decree confirming the same on August 15, 1898;" and

By inserting after the words, "and while the mortgaged property still remained in the charge and care of said receiver," the words "said admissions being that the following items of expenditures and indebtedness contracted and owing by the receiver

307 subsequent to the date of his last report as appears in his final report and petition herein, were and are correct, to wit:

2 men employed for taking care of the property, for 12 months	$900.00
Balance due on account of personal expenses as called for in said petition	529.40
Balance due F. C. McClelland for services	128.00
Balance due, J. J. Hinckley for services	900.00
Total	$2457.40

—all of which appears in said report.

And the receiver and his counsel, Charles N. Fox, waive any claim for further or additional compensation for services rendered subsequent to the final decree in the cause."

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

No. 11950.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Respondent.

Petition for Order Allowing Appeal.

Comes now the Atlantic Trust Company, the original complainant in the above-entitled cause, conceiving itself aggrieved by the final decree heretofore made and entered by this Court against
308 said company and in favor of E. C. Chapman, Esq., and having filed with the clerk an assignment of errors prays this Honorable Court to allow an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from said decree, and that a transcript of the record, papers and proceedings upon which said decree was made, duly authenticated, may be sent to said Court of Appeals.

Dated September 23d, 1904.

J. J. SCRIVNER,
Solicitor for Atlantic Trust Company, Appellant.

Allowed this September 23d, 1904.

WM. W. MORROW,
U. S. Circuit Judge.

[Endorsed:] Filed September 23, 1904. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

309 In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

No. 11950.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY ET AL., Defendants.

In Proceedings Supplemental to Decree of Foreclosure and Decree of Confirmation of Sale Under said Foreclosure had on Final Report and Petition of Edgar C. Chapman, Receiver in said Cause.

Assignment of Errors.

And now on the 23d day of September, 1904, comes the complainant and says that in the record and proceedings in the above-entitled cause, there is manifest error in each and every one of the following particulars, to wit:

First.

(*a*) In holding that the said complainant is liable for and directing judgment in favor of Edgar C. Chapman, receiver in this cause, for the amount of the deficiency remaining unpaid on account of receiver's certificates theretofore issued by said receiver in this cause.

310 (*b*) In holding that he is liable and directing judgment for the accrued interest thereon at the rate of ten per centum per annum.

(*c*) In holding that he is liable and directing judgment for any interest on the items aforesaid after the date of the decree of foreclosure.

Second.

(*a*) In holding that the said complainant is liable for and directing judgment in favor of Edgar C. Chapman, receiver in this cause, for the amount of deficiency remaining unpaid on account of advances made by said receiver in the care and management of the mortgaged property.

(*b*) In holding that he is liable and directing judgment for interest thereon from the date of the decree of foreclosure to the date of said judgment at the rate of seven per centum per annum.

(*c*) In holding that he is liable and directing judgment for any interest on the items aforesaid after the date of the decree of foreclosure.

Third.

(*a*) In holding that the said complainant is liable for and directing judgment in favor of Edgar C. Chapman, receiver in this cause, for the amount of the deficiency remaining unpaid on account of time checks issued for work and labor, held by divers persons and allowed in and by the said decree of foreclosure.

311 (*b*) In holding that he is liable and directing judgment for interest thereon from the date of said decree of foreclosure to the date of said judgment.

(*c*) In holding that he is liable and directing judgment for any interest on the items aforesaid after the date of the decree of foreclosure.

Fourth.

(*a*) In holding that the said complainant is liable for and directing judgment in favor of Edgar C. Chapman, receiver in this cause, for the amount of the deficiency remaining unpaid to divers persons for work and labor done, materials furnished and for board of men employed on said work allowed and ordered paid by the said decree of foreclosure.

(*b*) In holding that he is liable and directing judgment for interest thereon at the rate of seven per centum per annum from the date of said decree of foreclosure to the date of said judgment.

(*c*) In holding that he is liable and directing judgment for any interest on the items aforesaid after the date of decree of foreclosure.

Fifth.

(*a*) In holding that the said complainant is liable for and directing judgment in favor of Edgar C. Chapman, receiver in this cause for the amount of deficiency remaining unpaid on account of advances made by said receiver in the care and management of
312 the mortgaged property after the decree of foreclosure, and while the same remained in his charge and care, and on account of the advances made by said receiver to F. G. McClelland for services, work and labor during the same time, and on account of the advances made by said receiver to J. J. Hinckley for services rendered during the same time.

Sixth.

In holding that the said complainant is liable for and directing judgment in favor of said Edgar C. Chapman, receiver in this cause, against the complainant for the sum of thirty-six thousand two hundred and seven and 57/100 dollars ($36,207.57), with interest thereon from the date of said judgment until paid at the rate of seven per centum per annum, together with the costs in this supplemental proceedings, taxed at the sum of one hundred seventy-three and 55/100 dollars ($173.55).

Seventh.

In not holding that the decree of foreclosure is *res adjudicata* as to the method of payment of the items therein set forth, and that the Court had no jurisdiction to make any further order, judgment or decree with reference thereto, or to make any order, judgment or decree, ordering or adjudging that the complainant pay the same or any part thereof.

Eighth.

In not holding that so long as the decree of foreclosure herein remains unopened, the Court had no jurisdiction to enter any
313 order or decree *in personam* against this complainant, directing it to pay any part of the fees, expenses, certificates, time checks or other obligations aforesaid, but that they are collectible only out of the property under foreclosure.

Ninth.

In not holding that the receiver is barred from maintaining this proceeding by his laches and inequitable conduct in the premises.

Tenth.

In not requiring the bondholders whose names are given in the 13th clause of the answer to be cited and made parties to the hearing upon the receiver's petition for judgment against this complainant.

Eleventh.

In not holding that the complainant under the terms of the deed of trust and the law and practice of this court incurred no personal liability in exercising, or declining to exercise, its discretionary powers, except to the extent of the funds and property held by it as trustee for the use and benefit of the bondholders.

Twelfth.

In not holding that the complainant was free from all manner of fraud, collusion, unlawful combination and confederacy wherewith it is by the said report and petition of the receiver charged.

Wherefore the said complainant prays that the said decree
314 of the Circuit Court of the United States, Northern District of California, be reversed and that the said Court may be directed to enter a decree in accordance with the prayer of the answer of the complainant in the above-entitled proceeding.

Dated September 23d, 1904.

J. J. SCRIVNER,
Solicitor for Complainant.

[Endorsed:] Filed September 23, 1904. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

No. 11950.

THE ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Respondent.

Order Allowing an Appeal and Fixing Amount of Bond.

Upon motion of J. J. Scrivner, Esq., complainant's solicitor, and upon the filing of a petition for an order allowing an appeal, together with an assignment of errors, it is ordered that complainant be and
it hereby is allowed to prosecute an appeal from the decree
315 and judgment hereto made and entered against said complainant in the above-entitled cause, to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, and that the amount of the security to be furnished by said complainant upon such appeal, be and the same is hereby fixed at five hundred ($500.00) dollars to — approved by this Court or the Judge thereof, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated September 23d, 1904.

WM. W. MORROW,
Circuit Judge.

[Endorsed:] Filed September 23, 1904. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

Bond on Appeal.

Know all men by these presents, that we, Atlantic Trust Company, as principal, and National Surety Company, as surety, are held and firmly bound unto Edgar C. Chapman, receiver of the Woodbridge Canal and Irrigation Company and to P. A. Buell & Company, Eaton, Newell & Buckley, Louis Epstein & Company, Fresno National Bank, Stockton Lumber Company, Kutner, Goldstein & Company, Bank of Central California, J. J. Swain, H.
316 Bentley, Francis Cogswell and Stanley W. Dexter in the full and just sum of five hundred ($500) dollars, to be paid to the said obligees, their certain attorneys, executors, administrators, successors or assigns; to which payment well and truly to be made, we bind ourselves and our successors, jointly and severally, by these presents. Sealed with our seals and dated this 23d day of September, in the year of our Lord one thousand nine hundred and four.

Whereas, lately at a Circuit Court of the United States for the Northern District of California, in a suit pending in said court, between Atlantic Trust Company, as complainant, and Woodbridge Canal and Irrigation Company, as defendant, a decree was rendered against the said Atlantic Trust Company and in favor of the said receiver, and the said Atlantic Trust Company having obtained an order allowing an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and having obtained a citation directed to the appellees above named, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in said Circuit:

Now, the condition of the above obligation is such, that if the said Atlantic Trust Company shall prosecute its appeal to effect,
317 and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of

NATIONAL SURETY COMPANY,
By ROBERT M. NUGENT,
Res. Vice-President.

[Seal of National Surety Company.]

Attest: RICHARD J. MORIARTY,
Res. Ass't Secretary.

ATLANTIC TRUST COMPANY,
BRAYTON IVES, *President.*

[Seal of Atlantic Trust Company.]

Attest: CHAS. BAUER, JR., *Secretary.*

Approved by
WM. W. MORROW,
U. S. Circuit Judge.

Affidavit, Acknowledgment and Justification of Guaranty of Surety Company.

STATE OF NEW YORK, *County of New York, ss:*

On this 23d day of September, one thousand nine hundred and four, before me personally came Robert M. Nugent, known to me to be the Res. Vice-President of the National Surety Com-
318 pany, the corporation described in and which executed the within and foregoing bond of Atlantic Trust Company as surety thereon, and who, being by me duly sworn, did depose and say that he resides in the city of New York, State of New York; that he is the Res. Vice-President of said company, and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the act of Congress of August 13, 1894; that the seal affixed to the within bond of Atlantic Trust Company is the corporate seal of said company, and was thereto affixed by order and authority of the board of directors of said company; and that he signed his name thereto by like order and authority as Res. Vice-President of said company, and that he is acquainted with Richard J. Moriarty and knows him to be the Res. Asst. Secretary of said company; and that the signature of said Richard J. Moriarty subscribed to said bond is in the genuine handwriting of said Richard J. Moriarty, and was thereto subscribed by order and authority of said board of directors, and in the presence of said deponent; and that the assets of said company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of one million dollars.

Frank L. Gilbert, of San Francisco, Cal., is our agent to acknowledge service in the Judicial District wherein this bond is given.

ROBERT M. NUGENT.

319 Sworn to, acknowledged before me, and subscribed in my presence this 23d day of September, 1904.

[NOTARIAL SEAL.] BELLE F. JAIS, No. 47,
Notary Public for the County of New York.

Certificate filed in Kings, Westchester, Richmond and Queens Counties.

[Endorsed:] Filed September 28, 1904. Southard Hoffman, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

ATLANTIC TRUST COMPANY, Appellant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, EDGAR C. CHAPMAN, Receiver, Appellee.

Præcipe for Transcript.

To the Clerk of said Court:

You are hereby directed to make up the record on appeal taken by Atlantic Trust Company from the judgment and decree made by said Court in said cause in proceedings supplementary to decree of foreclosure and sale on the 30th day of March, 1904, to the United States Circuit Court of Appeals; said record to consist of the following papers in said cause, to wit:

320 (1) Bill of complaint, filed October 3, 1894, and copy of deed of trust.

(2) Subpœna.

(3) Order appointing receiver.

(4) Supplemental order of final appointment.

(5) Receiver's report of December 29, 1894, and Exhibit "A" thereto annexed.

(6) Order for leave to issue receiver's certificates, February 23, 1895.

(7) Receiver's report of January 31, 1895.

(8) Order for leave to issue receiver's certificates, February 15, 1895.

(9) Receiver's report of August 13, 1896.

(10) Order for leave to issue receiver's certificates, November 19, 1896.

(11) Amended bill of complaint, filed December 16, 1895.

(12) Order taking amended bill *pro confesso*, Dec. 16, 1895.

(13) Petition of intervention by P. A. Buell & Company *et al.*, March 25, 1896.

(14) Order allowing intervention of P. A. Buell & Company *et al.*, June 12, 1896.

(15) Order allowing bonds. P. A. Buell & Company *et al.*, April 5, 1897.

(16) Clerk's docket down to Sept. 18, 1897.

(17) Final decree of foreclosure, September 18, 1897.

(18) Decree of confirmation, August 15, 1898.

(19) Report of Clerk, September 7, 1898.

321 (20) Receiver's report of August 10, 1897, and Exhibit "D" thereto annexed.

(21) Report and petition of receiver, August 3, 1899.

(22) Order to show cause thereon, November 18, 1899.

(23) Demurrer of complainant, December 11, 1899.

(24) Order denying receiver's application, March 11, 1901.
(25) Mandate of Circuit Court of Appeals, December, 1902.
(26) Affidavit and order extending time of complainant to file answer, March 20, 1903.
(27) Answer of complainant, April —, 1903.
(28) Motion for decree as upon bill and answer, Oct., 1903, and entry of order thereon.
(29) Judgment and decree, March 30, 1904.
(30) Amendment of same *nunc pro tunc* and stipulation of July 9, 1904; and minute order of July 27th, 1904, allowing same.
(31) Petition for order allowing appeal.
(32) Assignment of errors.
(33) Order allowing appeal.
(34) Bond for costs and approval.
(35) Citation on appeal and proof of service.

J. J. SCRIVNER,
Solicitor for Complainant and Appellant.

[Endorsed:] Filed October 4, 1904. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

322 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 11950.

ATLANTIC TRUST COMPANY, Complainant,
vs.
WOODBRIDGE CANAL AND IRRIGATION COMPANY, Defendant.

Certificate to Record on Appeal.

I, Southard Hoffman, clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing pages, numbered from 1 to 276, inclusive, to be full, true and correct copies of the following papers, records and proceedings in the above-entitled cause, viz: bill of complaint and Exhibit "A"—Trust Deed—filed October 3, 1894; order appointing receiver and supplemental order of final appointment, filed October 3, 1894; report of receiver and Exhibt "A" attached thereto, filed December 29, 1894; order authorizing and directing receiver to borrow money, filed January 23, 1895; report and petition of receiver, filed January 31, 1895; order authorizing receiver to borrow money and issue receiver's certificates, filed February 15, 1895; notice of motion for order of sale and report of receiver, filed August 14, 1896; order authorizing receiver's certificates to issue, filed November 19, 1896;
323 amended bill of complaint and exhibits "A" and "B" attached thereto, filed December 16, 1895; order taking amended bill of complaint *pro confesso*, entered March 5, 1896; petition of

intervention of P. A. Buell & Co., *et al.*, filed June 12, 1896; order allowing intervention of P. A. Buell & Co., *et al.*, to be filed, entered June 12, 1896; order directing entry of decree in favor of Buell & Co., *et al.*, interveners, entered April 5, 1897; report of receiver with Exhibit "D" attached thereto, filed August 10, 1897; docket entries of clerk, to September 18, 1897; decree of foreclosure and sale, filed and entered September 18, 1897; decree of confirmation of sale, filed and entered August 15, 1898; report of clerk pursuant to decree of August 15, 1898, filed September 7, 1898; final report and petition of receiver, filed August 3, 1899; order to show cause on petition of receiver, filed November 18, 1899; demurrer of complainant to receiver's report and motion for judgment, filed December 11, 1899; order denying receiver's application for order directing complainant to pay amount due, etc., entered March 11, 1901; mandate of United States Circuit Court of Appeals for the Ninth Circuit, filed and entered April 19, 1903; affidavit for order extending time to file answer, and order extending time to file answer, filed April 2, 1903; answer of complainant to final report and petition of receiver filed April 14, 1903; notice of motion to strike from files receiver's motion to strike out complainant's answer, etc., filed October 7, 1903; order denying receiver's motion to strike out answer and complainant's motion to strike out receiver's said motion, etc., entered November 16, 1903; order of court submitting receiver's petition on
324 petition and answer and briefs to be filed, entered November 23, 1903; judgment and decree on receiver's petition, etc., filed and entered March 30, 1904; stipulation as to motion to amend decree, etc., and amended judgment and decree, filed and entered July 27, 1904, *nunc pro tunc* as of the 30th day of March, 1904; order amending decree *nunc pro tunc*, entered July 27, 1904; petition for order allowing appeal, filed September 23, 1904; assignment of errors filed September 23, 1904; order allowing an appeal and fixing amount of bond; filed September 23, 1904; bond on appeal, filed September 28, 1904, and præcipe for transcript, filed October 4, 1904, and that the same constitute the transcript of the record herein upon the appeal of the Atlantic Trust Company, complainant, from the judgment and decree, filed and entered July 27, 1904, in said Circuit Court of the United States, for the Northern District of California, *nunc pro tunc* as of March 30, 1904, in favor of Edgar C. Chapman, receiver, etc., and against the complainant above named, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is $175.70, that said amount was paid by the Atlantic Trust Company, and that the original citation issued herein is hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 25th day of November, A. D. 1904.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

325 UNITED STATES OF AMERICA,
State of California, City and County of San Francisco, Northern District of California, ss:

Wm. G. Cohen, being first duly sworn, deposes and says: That he is a white male resident of the State of California, over the age of twenty-one years, and not a party to the within-entitled cause; that on the 27th day of October, 1904, at and in the county of Fresno, State of California, affiant personally served the annexed citation in said matter upon the Fresno National Bank, a corporation, by then and there delivering to and leaving with Daniel Brown, Jr., the cashier of said Fresno National Bank, for said corporation, a true and correct copy of said citation; affiant further says that on said 27th day of October, 1904, he personally served said citation upon Louis Einstein & Co., a corporation, in said Fresno County, California, by then and there delivering to and leaving with C. H. Miller, the secretary of said last-named corporation, for said corporation, a true and correct copy of said annexed citation; that on said 27th day of October, 1904, at said county of Fresno, California, affiant served the said annexed citation on Kutner, Goldstein & Co., a corporation, by then and there delivering to and leaving with E. E. Manheim, the secretary of said Kutner, Goldstein & Co., for said corporation, a true and correct copy of said citation, and that on said 27th day of October, 1904, affiant also served the said annexed
326 citation in said matter on the Bank of Central California, a corporation, in Fresno County, California, by then and there delivering to and leaving with Louis Einstein, the President of said corporation, for said corporation, a true and correct copy of said citation.

W. G. COHEN.

Subscribed and sworn to before me, this 18th day of November, 1904.

[SEAL.] D. B. RICHARDS,
Notary Public in and for the City and County of San Francisco.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to E. C. Chapman, Receiver of the Woodbridge Canal and Irrigation Company, a Corporation; P. A. Buell & Co.; Eaton, Newell & Buckley; Louis Epstein & Co.; Fresno National Bank; Stockton Lumber Co.; Kutner, Goldstein & Co.; Bank of Central California; J. J. Swain; H. Bently; Francis Cogswell and Stanley W. Dexter, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing appeal filed

in the clerk's office of the Circuit Court of the United States,
327 for the Northern District of California, in that certain suit numbered 11,950, entitled Atlantic Trust Company, a Corporation, Complainant, *vs.* Woodbridge Canal and Irrigation Company, a Corporation, *et al.*, etc., Respondents, wherein Atlantic Trust Company, a Corporation, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William W. Morrow, United States Circuit Judge for the Ninth Judicial Circuit, at San Francisco, this 28th day of September, A. D. 1904.

WM. W. MORROW,
United States Circuit Judge.

Return on Service of Writ.

UNITED STATES OF AMERICA, *N. District of California, ss:*

I hereby certify and return that I served the annexed citation on the therein-named E. C. Chapman, receiver of the Woodbridge Canal and Irrigation Co., a corporation, by handing to and leaving a true and correct copy thereof with said E. C. Chapman, as said receiver, personally at San Francisco, in said District, on the 11th day of October, A. D. 1904, and I further return that after due and diligent search and inquiry I was unable to find, P. A. Buell & Co.,
328 Louis Epstein & Co., Fresno National Bank, Stockton Lumber Co., Kutner Goldstein & Co., Bank of Central California, H. Bentley, Francis Cogswell, in my District.

JOHN H. SHINE,
U. S. Marshal.

Return on Service of Writ.

UNITED STATES OF AMERICA, *Northern District of California, ss:*

I hereby certify and return that I served the annexed citation on the therein-named Eaton, Newell & Buckley, and J. J. Swain, by handing to and leaving a true and correct copy thereof with each of said parties personally at Stockton, San Joaquin Co., in said District, on the 8th day of October, A. D. 1904.

JOHN H. SHINE,
U. S. Marshal.

[Endorsed:] Marshal's Docket No. 3496. No. 11,950. In the Circuit Court of the United States for the Ninth Circuit, Northern District of California. Atlantic Trust Company *vs.* Woodbridge Canal and Irrigation Company. Citation. Filed November 18, 1904. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

329 [Endorsed:] No. 1142. United States Circuit Court of Appeals for the Ninth Circuit. Atlantic Trust Company (a Corporation), Appellant, *vs.* E. C. Chapman, Receiver of the Woodbridge Canal and Irrigation Company (a Corporation), P. A. Buell & Co., Eaton, Newell & Buckley, Louis Epstein & Co., Fresno National Bank, Stockton Lumber Co., Kutner, Goldstein & Co., Bank of Central California, J. J. Swain, H. Bently, Francis Cogswell and Stanley W. Dexter, Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the Northern District of California. Filed November 28, 1904. F. D. Monckton, Clerk.

330 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1142.

ATLANTIC TRUST COMPANY, a Corporation, Appellant,
vs.
E. C. CHAPMAN, Receiver of the Woodbridge Canal and Irrigation Company (a Corporation), *et al.*, Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three hundred and twenty-nine (329) pages, numbered from one (1) to three hundred and twenty-nine (329), inclusive, including the index and cover thereto, to be a true copy of the printed transcript of record upon appeal from the United States Circuit Court for the Northern District of California, in the above-entitled case, as the original and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit and as said original remains of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 9th day of August, A. D. 1906.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

331 No. 1142.

United States Circuit Court of Appeals for the Ninth Circuit.

ATLANTIC TRUST COMPANY, a Corporation, Appellant,
vs.
E. C. CHAPMAN, Receiver of the Woodbridge Canal and Irrigation Company, a Corporation; P. A. BUELL & Co., EATON, NEWELL & BUCKLEY, LOUIS EPSTEIN & Co., FRESNO NATIONAL BANK, STOCKTON LUMBER CO., BANK OF CENTRAL CALIFORNIA, J. J. SWAIN, H. BENTLY, FRANCIS COGSWELL, and STANLEY W. DEXTER, Appellees.

Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.

Upon Appeal from the United States Circuit Court for the Northern District of California.

332 *Index to Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.*

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333 At a Stated Term, to wit, the October Term, A. D. 1905, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court-room, in the city and county of San Francisco, on Wednesday, the seventh day of March, in the year of our Lord one thousand nine hundred and six.

Present: The Honorable William B. Gilbert, Circuit Judge; Honorable Erskine M. Ross, Circuit Judge, Honorable Thomas P. Hawley, District Judge.

No. 1142.

THE ATLANTIC TRUST COMPANY, a Corporation, Appellant,
vs.
E. C. CHAPMAN, Receiver, etc., *et al.*, Appellees.

Order of Submission.

Ordered, appeal argued by Mr. Elliott McAllister, counsel for the appellant, and Mr. E. C. Chapman, in *propria personam*, and submitted to the Court for consideration and decision.

334 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1142.

ATLANTIC TRUST COMPANY, Appellant,
vs.
E. C. CHAPMAN, Receiver, STANLEY W. DEXTER ET AL., Appellees.

Opinion U. S. Circuit Court of Appeals.

J. J. Scrivner for the Appellant.
E. C. Chapman and Stanley W. Dexter, Appellees in person.

Before Gilbert and Ross, Circuit Judges, and Hawley, District Judge.

GILBERT, *Circuit Judge*, delivered the opinion of the court.

This case was before this court before on appeal from a decree sustaining the demurrer of the appellant, the Atlantic Trust Company to the petition of E. C. Chapman, receiver, for an order requiring the Trust Company to pay the costs and expenses of the receivership. Chapman *v.* Atlantic Trust Co. *et al.*, 119 Fed. 257. This court adjudged that the demurrer should have been overruled and held that where the costs and expenses of the management of mortgaged property by a receiver in a suit, which costs and expenses were authorized by the court and exceed the proceeds of the property when sold, together with its earnings and the court has expressly retained
335 jurisdiction over the subject matter and the parties until the final settlement of the receiver's accounts, it has power on such settlement to render a judgment for the deficiency against the complainant at whose instance the receiver was appointed and continued and the expenses incurred. The cause was remanded to the Circuit Court for further proceedings. The Trust Company then filed its answer to the receiver's petition. Thereupon the matter was submitted to the Circuit Court as upon bill and answer. Upon consideration thereof the court entered a decree adjudging that the Trust Company pay to the receiver the costs and expenses in accordance with the prayer of his petition. From that decree the present appeal is taken.

Upon submission of the cause as upon bill and answer, the Trust Company was entitled to the benefit of all denials in the answer of the matters set forth in the petition and all matters properly pleaded in the answer, and the question at issue was what was a proper judgment upon the facts presented by the petition and not denied in the answer together with the facts properly pleaded in the answer. Reynolds *v.* Crawfordsville Bank, 112 U. S. 405; Banks *v.* Manchester, 128 U. S. 244.

The appellant contends that upon the case now presented the equities are with it and that certain allegations of the petition which

stood admitted upon the record when the case was formerly before this court, are now eliminated by reason of denials in the answer, such as the allegation that the expenses were incurred on the motion or request of the appellant, that the receiver acted upon its assurances as to the sufficiency of the property to pay the foreclosure expenses, that the foreclosure was irregular and collusive and that the acts of the appellant contributed to the delay of the suit and its disastrous result. The appellant urges that the receiver himself was the
336 person best acquainted with the situation at all times and that he should have given warning that future expenses might result in a deficit upon a sale, that so far as the final disaster was due to human mistakes it was due to the mistakes of the receiver and his employés, and particularly to his selection of an engineer at the instance of others, and that the delays which prolonged the receivership until the break-down of the dam, were due to matters beyond the appellant's control, such as intervention in the suit by outside parties and the litigation resulting therefrom. The answer sets up reasons, some by way of argument, others by statement of facts, why the appellant should not be held liable for the expenses of the receivership. It does not deny any of the material facts alleged in the petition. It alleges as matter of defense that the Canal & Irrigation Company was a quasi public corporation; that all the expenses were incurred by the receiver as the officer and hand of the court, not as the agent of the appellant nor for its benefit, but for the benefit of all concerned including the public. It alleges, and this is one of the principal defenses relied on, that the appellant is a corporation enjoying high credit in commercial communities throughout the United States, and that had it been known or understood by persons taking the receiver's certificates that it was personally liable upon them, the certificates would have been readily subscribed at a low rate of interest instead of being placed with difficulty at the high rate of 10 per centum per annum. We do not see how this defense can avail the appellant to avoid its liability. It was bound to know the law and to know the nature of the obligation which it assumed in asking the court to appoint the receiver to manage the property. It must be presumed to have had notice of the progress of the case, the difficulties of the receivership, the expenses thereof and the issuance of receiver's certificates together with the difficulty of disposing of the same. If its
337 credit in the commercial world would have been of aid in disposing of the receiver's certificates at a lower rate of interest, it had the opportunity to use its credit for that purpose. It brought the foreclosure suit at the request of stockholders, it is true, but it was not bound to resort to the court or to ask for the appointment of a receiver. The trust deed gave it the option to sell at public auction the entire property in case of default in the payment of interest.

The appellant relies on the defense of laches as against its liability for the costs incurred by the receiver. It has not specified the laches in pleading that defense in its answer, but it argues that the facts show that it was kept in unsuspecting quiet until the time had ex-

pired when it could either bid upon the foreclosure sale or redeem from that sale, or appeal from the foreclosure decree, and that had there been any claim that it would be held responsible for the deficit caused by the receiver's management of the property, there can be no doubt that it would have protected itself by bidding at the sale up to the full amount of the deficit, whereby it would have had the property to exploit or sell. This argument is based upon the assumption, unsupported by anything discoverable in the record, that the property on the foreclosure sale sold for less than its full value. We are not warranted in assuming that it sold for less. If it did, was it not the duty of the Trust Company, protecting the bondholders, to see that it did sell for its full value or to redeem in case it did not? Its duty to itself to avoid payment of receiver's expenses was no greater than its obligation to its *cestuis que trustent* to protect their interests in the foreclosure sale. We can discover no ground for imputing laches to the receiver. It was not among his duties to advise the appellant of his understanding of its legal liability to him. It
338 was its duty to know it.

It is contended that the bondholders should have been made parties to the receiver's petition and the proceedings thereunder, and that they should bear their due proportion of the expenses with the bondholders at whose particular instance the suit was brought and whom the appellant represented in the foreclosure suit, that this contention is especially sustainable as to the intervening bondholders who did become parties to the foreclosure proceedings, and that thereby they became co-complainants and assumed their proportion of the costs and expenses of the litigation. Some of the intervening bondholders appeared in the double capacity of creditors of the corporation and holders of its bonds. The record shows however, that they were compelled to intervene as bondholders for the reason that the appellant, whose duty it was to represent and protect all the bondholders, refused to represent the interveners and attacked and assailed the validity of their bonds. It is true that the intervenors were allowed costs, but their costs have not been paid nor are such costs included in the sums adjudged to be paid to the receiver. In the proceeding to adjust the receiver's account and to fix liability for the payment of the amount due him, it may be that all bondholders might, upon their own application have been admitted as parties, and perhaps it would have been within the discretion of the trial court to order that they be made parties upon a plea of the appellant suggesting non joinder of parties. They were not necessary parties however. To have brought them in would have been to inject into the case a controversy between the trustee and its *cestuis que trustent* in which the receiver had no interest. The case was one primarily between the receiver and the appellant. Its determination was not affected by the fact that the latter acted in a representative capacity in incurring the liability, the bondholders being represented
339 by him and interested only consequentially. Kerrison, Assignee *v.* Stewart, 93 U. S., 155. The appellant may have the right to demand reimbursement from the bondholders for the expenses of the receivership, but that is a question which is not before

us. When the appellant took this appeal it served a citation upon certain of the bondholders who were not parties to the proceedings, and one of them, Stanley W. Dexter, as holder of the majority of the bonds, appeared in person in this court and presented his brief. We may consider his appearance as that of *amicus curiæ*. We find no ground for saying that the Circuit Court erred in dealing with the case as one between the appellant and the receiver or in adjudging that the former pay the expenses of the receivership. The decree is affirmed.

(Endorsed:) Opinion. Filed May 14, 1906. F. D. Monckton, Clerk.

340 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1142.

THE ATLANTIC TRUST COMPANY, a Corporation, Appellant,
vs.
E. C. CHAPMAN, Receiver of the Woodbridge Canal & Irrigation Company, a Corporation; P. A. BUELL & Co., EATON, NEWELL & BUCKLEY, LOUIS EPSTEIN & Co., FRESNO NATIONAL BANK, STOCKTON LUMBER Co., KUTNER, GOLDSTEIN & Co., BANK OF CENTRAL CALIFORNIA, J. J. SWAIN, H. BENTLEY, FRANCIS COGSWELL, and STANLEY W. DEXTER, Appellees.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Northern District of California.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed, with costs.

[Endorsed:] Decree. Filed and Entered. May 14, 1906. F. D. Monckton, Clerk.

341 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1142.

THE ATLANTIC TRUST COMPANY, a Corporation, Appellant,
vs.
E. C. CHAPMAN, Receiver, etc., *et al.*, Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings, etc.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ten

(10) pages, numbered from one (1) to ten (10), inclusive, to be a true copy of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit as the same remain of record in my office, and that the same in connection with the preceding certified copy of the printed Transcript of Record from the United States Circuit Court for the Northern District of California in the above-entitled case constitute a true copy of the entire record therein.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 9th day of August, A. D. 1906.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.

342 UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Atlantic Trust Company, is appellant, and Edgar C. Chapman, Receiver of The Woodbridge Canal and Irrigation Company *et al.*, are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
343 States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of October, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

344 [Endorsed:] Docketed. File No. 20,378. Supreme Court of the United States. No. 413, October Term, 1906. The Atlantic Trust Co., *vs.* E. C. Chapman, Receiver, &c. Writ of Certiorari. Docketed. No. 1142. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 31 1906. F. D. Monckton, Clerk.

345 United States Circuit Court of Appeals for the Ninth Circuit.

1142.

ATLANTIC TRUST COMPANY (a Corporation), Appellant,
against
EDGAR C. CHAPMAN, Receiver of the Woodbridge Canal and Irrigation Company, a Corporation, Appellees.

It is hereby stipulated that the transcript already filed in the Clerk's office of the Supreme Court of the United States with the petition for the writ of certiorari be taken as a return to said writ dated the 16th day of October, 1906.

STANLEY W. DEXTER,
J. J. SCRIVNER,
Counsel for Atlantic Trust Co.
E. C. CHAPMAN,
Receiver, in Person.

(Endorsed:) Stipulation of Counsel as to Return to Writ of Certiorari. Filed Oct. 31, 1906. F. D. Monckton, Clerk.

346 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1142.

ATLANTIC TRUST COMPANY, a Corporation, Appellant,
vs.
E. C. CHAPMAN, Receiver of the Woodbridge Canal & Irrigation Company, a Corporation; P. A. BUELL & CO., EATON, NEWELL & BUCKLEY, LOUIS EPSTEIN & CO., FRESNO NATIONAL BANK, STOCKTON LUMBER CO., KUTNER, GOLDSTEIN & CO., BANK OF CENTRAL CALIFORNIA, J. J. SWAIN, H. BENTLEY, FRANCIS COGSWELL, and STANLEY W. DEXTER, Appellees.

Certificate to Stipulation of Counsel as to Return to Writ of Certiorari.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next preceding page to be a true copy of a stipulation of counsel as to return to writ of certiorari, filed in the above-entitled cause on the 31st day of October, 1906, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 15th day of November, A. D. 1906.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

347 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1142.

THE ATLANTIC TRUST COMPANY, a Corporation, Appellant,

vs.

E. C. CHAPMAN, Receiver of the Woodbridge Canal & Irrigation Company, a Corporation; P. A. BUELL & Co., EATON, NEWELL & BUCKLEY, LOUIS EPSTEIN & Co., FRESNO NATIONAL BANK, STOCKTON LUMBER CO., KUTNER, GOLDSTEIN & Co., BANK OF CENTRAL CALIFORNIA, J. J. SWAIN, H. BENTLEY, FRANCIS COGSWELL, and STANLEY W. DEXTER, Appellees.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, Clerk of the said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send without delay to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said writ a certified copy of a stipulation entered into between the counsel for the respective parties to the said cause, the original of which stipulation is on file and of record in my office, and do
348 hereby certify the said stipulation as due return to the said writ.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 15th day of November, A. D. 1906.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.

[Endorsed:] 413, 20378, Nov. 21, '06.

349 [Endorsed:] File No. 20,378. Supreme Court U. S. October Term, 1907. Term No. 109. The Atlantic Trust Company, Petitioner *vs.* Edgar C. Chapman Receiver &c. Writ of Certiorari and return. Filed Nov. 20th, 1906.